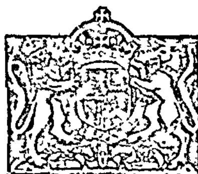
INCOME-TAX MANUAL

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PREFATORY NOTE TO THE FIRST EDITION.

The statutory provisions relating to income tax are contained in Parts I and II of this Manual Part I contains the Income tax Act and the relevant portion of the Finance Act, and Part II contains the rules made under the Act

Part III contains instructions and notes designed to assist income tax authorities in the determination of questions which are bound to arise in assessments under the new Act These instructions and notes have no statutory force but income tax authorities should conduct assessments in accordance with them until they are cancelled or amended, unless in any particular instance the Income-tax Commissioner should desire to suspend action on any particular instruction pending a representation to the Board of Inland Revenue

* * * * * *

In the marginal references "R" means a rule in Part II, "S" a section of the Act in Part I, and "P" a paragraph in Part III of the Manual

SIMLA;
The 10th April 1922.

G. G. SIM,
Member,
Board of Inland Revenue.

TABLE OF CONTENTS

Part I

THE INDIAN INCOME TAX ACT, 1922

PREAMBLE

CHAPTER I

CHARGE OF INCOME TAX

CHAPTER II

INCOME TAX AUTHORITIES

CHAPTER III

TAXABLE INCOME

CHAPTER IV.

Deductions and Assessment.

CHAPTER V.

Liability in Special Cases.

CHAPTER V-A

Special Provisions relating to certain classes of shipping.

CHAPTER VI.

Recovery of Tax and Penalties

CHAPTER VII.

Refunds.

CHAPTER VIII.

OFFENCES AND PENALTIES.

CHAPTER IX.

SUPER-TAX.

CHAPTER IX-A.

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF PROVIDENT FUND.

CHAPTER X.

MISCELLANEOUS.

Part II.

Part III.

NOTES AND INSTRUCTIONS REGARDING THE INCOME-TAX LAW AND RULES.

PART I.

INCOME-TAX ACT, 1922

(XI OF 1922).

ACT No XI OF 1922, AS SUBSEQUENTLY AMENDED

An Act to consolidate and amend the law relating to Income tax and Super tax

WHEREAS it is expedient to consolidate and amend the law relating to Income tax and Super tax, It is hereby enacted as follows —

Short title extent and commencement

1. (*1*) This Act may be called the Indian Income tax Act, 1922

*(*2*) *It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas, and applies also, within the Indian States and the tribal areas, to British subjects who are in the service of the Crown or of a local authority established in the exercise of the powers of the Crown Representative or the Central Government in that behalf, and to all other servants of the Crown in the said States and areas* **P. 1.**

(*3*) It shall come into force on the first day of April, 1922

Definitions

2. In this Act, unless there is anything repugnant in the subject or context,—

(*1*) "agricultural income" means— **P. 2.**

(*a*) any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land revenue in British India or subject to a local rate assessed and collected by officers of **the Crown* as such,

(*b*) any income derived from such land by—

(*i*) agriculture, or

(*ii*) the performance by a cultivator or receiver of rent in kind of any process ordinarily employed by a cultivator or receiver of rent in-kind to render the produce raised or received by him fit to be taken to market, or

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* The Government of India (Adaptation of Indian Laws) Order 1937

A

(*iii*) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in sub-clause (*ii*);

(*c*) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator, or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any operation mentioned in sub-clauses (*ii*) and (*iii*) of clause (*b*) is carried on:

Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator or the receiver of the rent-in-kind by reason of his connection with the land, requires as a dwelling-house, or as a store-house, or other out-building;

P. 3. (*2*) "assessee" means a person by whom Income-tax is payable;

(*3*) "Assistant Commissioner" means a person appointed to be an Assistant Commissioner of Income-tax under section 5;

P. 34. (*4*) "business" includes any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce or manufacture;

*(*4A*) "The Central Board of Revenue" means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924;

(*5*) "Commissioner" means a person appointed to be a Commissioner of Income-tax under section 5;

P. 4. (*6*) "company" means a company as defined in the Indian Companies Act, 1913, or formed in pursuance of VII an Act of Parliament or of Royal Charter or Letters Patent, or of an Act of the Legislature of a British possession, and includes any foreign association carrying on business in British India whether incorporated or not.

*This clause was inserted by the Central Board of Revenue Act, 1924 (IV of 1924).

and whether its principal place of business is situated in British India or not which the **Central Board of Revenue* may, by general or special order, declare to be a company for the purposes of this Act,

†(*6A*) "firm", "partner" and "partnership" have the same meanings respectively as in the Indian Contract Act, 1872, and

(*7*) "Income tax Officer" means a person appointed to be an Income tax Officer under section 5,

(*8*) "Magistrate" means a Presidency Magistrate or a Magistrate of the first class, or a Magistrate of the second class specially empowered by the ‡*Central* Government to try offences against this Act

(*9*) "person" includes a Hindu undivided family,

(*10*) "prescribed" means prescribed by rules made under this Act,

(*11*) "Previous year" means— **P. 6.**

(*a*) the twelve months ending on the 31st day of March next preceding the year for which the assessment is to be made, or if the accounts of the assessee have been made up to a date within the said twelve months in respect of a year ending on any date other than the said 31st day of March then at the option of the assessee the year ending on the day to which his accounts have so been made up

Provided that if this option has once been exercised by the assessee, it shall not again be exercised so as to vary the meaning of the expression "previous year" as then applicable to such assessee except with the consent of the Income tax Officer and upon such conditions as he may think fit, or

(*b*) in the case of any person business or company, or class of person business or company, such

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* Amended by the Central Board of Revenue Act 1924 (IV of 1924)
† Inserted by the Indian Income tax (Amendment) Act 1930 (XXI of 1930)
N B —The definitions of firm and partnership in the Indian Contract Act 1872 have been replaced by the Indian Partnership Act 1932 (IX of 1932) but the definitions in the latter Act are effective owing to the operation of section 8 of the General Clauses Act 1897 (X of 1897)
‡ The Government of India (Adaptation of Indian Laws) Order, 1937

period as may be determined by the Central Board of Revenue or by such authority as the Board may authorise in this behalf;

P. 7. 8. (12) "principal officer" used with reference to a local authority or a company or any other public body or any* association, means—

(a) the secretary, treasurer, manager or agent of the authority, company, body or association, or

(b) any person connected with the authority, company, body or association upon whom the Income-tax Officer has served a notice of his intention of treating him as the principal officer thereof;

P. 9. (13) "public servant" has the same meaning as in the Indian Penal Code; XLV of 1860

P. 10. R. 2-6. (14) †"registered firm" means a firm registered under the provisions of section 26-A;

P. 11. (15) "total income" means total amount of income, profits and gains from all sources to which this Act applies computed in the manner laid down in section 16; and

P. 10. (16) "unregistered firm" means a firm which is not a registered firm.

CHAPTER I.

CHARGE OF INCOME-TAX.

P. 2, 6, 11, 12, 13, 14, 15. Charge of income tax. 3. Where any Act of the ‡*Central* Legislature enacts that income-tax shall be charged for any year at any rate or rates applicable to the total income of an assessee, tax at the rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of all income, profits and gains of the previous year of every

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* Amended by the Indian Income-tax (Amendment) Act, 1924 (XI of 1924).
† Amended by the Indian Income-tax (Amendment) Act, 1930 (XXI of 1930).
‡ The Government of India (Adaptation of Indian Laws) Order, 1937.

**individual Hindu undivided family company firm and other association of individuals †*

4. (*1*) Save as hereinafter provided this Act shall apply to all income, profits or gains, as described or comprised in section 6, from whatever source derived, accruing or arising, or received in British India or deemed under the provisions of this Act to accrue or arise or to be received in British India **P. 13, 15, 16.**

Application of Act

(*2*) ‡*Income*, profits and gains accruing or arising without British India to a person resident in British India§ *shall, if they are received in or brought into British India, be deemed to have accrued or arisen in British India and to be* ‡*income, profits and gains of the year in which they are so received or brought,* notwithstanding the fact that they did not so accrue or arise in that year ¶* * * * *

‡*Provided that nothing contained in this sub section shall apply to any income, profits or gains so accruing or arising prior to the 1st day of April 1933 unless they are income, profits or gains of a business and are received in or brought into British India within three years of the end of the year in which they accrued or arose*

‡*Provided further that nothing in this sub section shall apply to income from agriculture arising or accruing in a State in India from land for which any annual payment in money or in kind is made to the State*

Explanation —‡Income, profits or gains accruing or arising without British India shall not be deemed to be

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* Amended by the Indian Income tax (Amendment) Act 1924 (XI of 1924)

† NOTE —The amendments made in Sections 3 55 and 56 of the Act by the Indian Income tax (Amendment) Act 1924 (XI of 1924) shall have effect as if they had been made on the first day of April 1923 and income tax and super tax shall be deemed to have been chargeable for the year commencing on that date and to be chargeable for the year commencing on the first day of April 1924 at the rate or rates applicable for those years to the total income of an individual in respect of the income profits and gains and of the total income respectively of every association of individuals for which no rate of tax has been otherwise laid down by law

‡Amended by the Indian Income tax (Amendment) Act 1933 (XII of 1933)

§Amended by the Indian Income tax (Further Amendment) Act 1923 (XXVII of 1923)

¶ Repealed by the Indian Income tax (Amendment) Act 1933 (XII of 1933)

received or brought into British India within the meaning of this sub-section by reason only of the fact that they are taken into account in the balance sheet prepared in British India.

P. 17, 33, 78. (3) This Act shall not apply to the following classes of income :—

P. 21. (i) Any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part only for such purposes, the income applied, or finally set apart for application, thereto.

P. 21. (ii) Any income of a religious or charitable institution derived from voluntary contributions and applicable solely to religious or charitable purposes.

(iii) The income of local authorities.

P. 23, 32. (iv) Interest on securities which are held by, or are the property of, any Provident Fund to which the Provident Funds Act, 1897*, IX of applies.† * * * * *

P. 23. (v) Any capital sum received in commutation of the whole or a portion of a pension, or in the nature of consolidated compensation for death or injuries, or in payment of any insurance policy, or as the accumulated balance at the credit of a subscriber to any such Provident Fund.

P. 33. (vi) Any special allowance, benefit or perquisite specifically granted to meet expenses wholly and necessarily incurred in the performance of the duties of an office or employment of profit.

(vii) Any receipts not being receipts arising from business or the exercise of a profession, vocation or occupation, which are of a casual and non-recurring nature, or are not

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* N.B.—The reference is now to the Provident Funds Act, 1925 (XIX of 1925).

†Repealed by the Indian Income-tax (Amendment) Act, 1924 (XI of 1924)

by way of addition to the remuneration of an employé.

(*viii*) Agricultural income. P. 2.

*(*ix*) Any income received by trustees on behalf of a recognised provident fund as defined in clause (*a*) of section 58-A. P. 24.

In this sub-section "charitable purpose" includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility.

4-A . 4-B.

CHAPTER II.

INCOME-TAX AUTHORITIES.

Income tax authorities.

5. (*1*) There shall be the following classes of Income-tax authorities for the purposes of this Act, namely :— P. 35.

(*a*) the Central Board of Revenue,

(*b*) Commissioners of Income-tax,

(*c*) Assistant Commissioners of Income-tax, and

(*d*) Income-tax Officers.

†* * * * * *

‡(*3*) *The* §*Central Government may appoint a Commissioner of Income-tax for any area specified in the order of appointment.*

(*4*) §The Central Government may appoint for any area as many Assistant Commissioners of Income-tax and Income-tax Officers as it thinks fit. They shall perform their functions ¶*in respect of such persons*

*Inserted by the Indian Income tax (Provident Funds Relief) Act, 1929 (XII of 1929).

†Repealed by the Central Board of Revenue Act, 1924 (IV of 1924)

‡Substituted by the Indian Income-tax (Second Amendment) Act, 1933 (XVIII of 1933)

§ The Government of India (Adaptation of Indian Laws) Order, 1937.

¶ Amended by the Indian Income-tax (Second Amendment) Act, 1933 (XVIII of 1933)

or classes of persons and of such incomes or classes of income and in respect of such areas as the Commissioner of Income-tax may direct* *and, where two or more Assistant Commissioners of Income-tax or Income-tax Officers have been appointed for the same area, in accordance with any orders which the Commissioner of Income-tax may make for the distribution and allocation of the work to be performed.* The Commissioner may, by general or special order in writing, direct that the powers conferred on the Income-tax Officer and the Assistant Commissioner by or under this Act shall, in respect of any specified case or class of cases, be exercised by the Assistant Commissioner and the Commissioner, respectively, and, for the purposes of any case in respect of which such order applies, references in this Act or in any rules made hereunder to the Income-tax Officer and the Assistant Commissioner shall be deemed to be references to the Assistant Commissioner and the Commissioner, respectively.

(*5*) The Central Board of Revenue may, by notification in the Gazette of India, appoint Commissioners of Income-tax, Assistant Commissioners of Income-tax and Income-tax Officers to perform such functions in respect of such classes of persons or such classes of income, and for such area, as may be specified in the notification, and thereupon the functions so specified shall cease, within the specified area, to be performed, in respect of the specified classes of persons or classes of income, by the authorities appointed under sub-sections (*3*) and (*4*).

(*6*) Assistant Commissioners of Income-tax and Income-tax Officers appointed under sub-section (*4*) shall, for the purposes of this Act, be subordinate to the Commissioner of Income-tax appointed under sub-section (*3*) for the †*area* in which they perform their functions.

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*Inserted by the Indian Income-tax (Second Amendment) Act, 1933 (XVIII of 1933).

†Amended by the Indian Income-tax (Second Amendment) Act, 1933 (XVIII of 1933).

CHAPTER III

Taxable Income

Heads of income chargeable to income tax

6. Save as otherwise provided by this Act, the following heads of income, profits and gains shall be chargeable to income tax in the manner hereinafter appearing namely — **P. 13.**

(i) Salaries

(ii) Interest on securities

(iii) Property

(iv) Business

(v) Professional earnings

(vi) Other sources

Salaries

7. (1) The tax shall be payable by an assessee under the head "salaries" in respect of any salary or wages, any annuity, pension or gratuity, and any fees, commissions, perquisites or profits received by him in lieu of, or in addition to, any salary or wages, which are paid by or on behalf of *the Crown*, a local authority, a company, or any other public body or association, or by or on behalf of any private employer **P. 33, 34, 36.**

†*Explanation* —The right of a person to occupy free of rent as a place of residence any premises provided by his employer is a perquisite for the purposes of this sub section

Provided that the tax shall not be payable in respect of any sum **deducted from the salary payable by or on behalf of the Crown to any individual being a sum deducted in accordance with the conditions of his service* for the purpose of securing to him a deferred annuity or of making provision for his wife or children provided that the sum so deducted shall not exceed one sixth of the salary **P. 11, 73.**

(2) Any income which would be chargeable under this head if paid in British India shall be deemed to be so chargeable if paid to a British subject or any servant of His Majesty in any part of India by **or on behalf of the Crown* or by a local authority established **in exercise of* **P. 1, 15, 37.**

* The Government of India (Adaptation of Indian Laws) Order 1937

† Inserted by the Indian Income tax (Amendment) Act 1923 (XV of 1923)

the powers of the Crown Representative or the Central Government on that behalf.

P. 16, 39. **8.** The tax shall be payable by an assessee under the head "Interest on securities" in respect of the interest receivable by him on any security of the **Central* Government or of a **Provincial* Government, or on debentures or other securities for money issued by or on behalf of a local authority or a company:

Interest on securities.

†*Provided that no income-tax shall be payable under this section by the assessee in respect of any sum deducted from such interest by way of commission by a banker realizing such interest on behalf of the assessee*:

P. 11. Provided *further* that no income-tax shall be payable on the interest receivable on any security of the Government of India issued or declared to be income-tax free:

Provided, further, that the income-tax payable on the interest receivable on any security of a **Provincial* Government issued income-tax free shall be payable by that **Provincial* Government.

P. 40, 42, 43. **9.** (*1*) The tax shall be payable by an assessee under the head "Property" in respect of the *bonâ fide* annual value of property consisting of any buildings or lands appurtenant thereto of which he is the owner, other than such portions of such property as he may occupy for the purposes of his business, subject to the following allowances, namely:—

Property.

P. 42. (*i*) where the property is in the occupation of the owner, or where it is let to a tenant and the owner has undertaken to bear the cost of repairs, a sum equal to one-sixth of such value;

P. 43. (*ii*) where the property is in the occupation of a tenant who has undertaken to bear the cost of repairs, the difference between such value and the rent paid by the tenant up to but not exceeding one-sixth of such value;

* The Government of India (Adaptation of Indian Laws) Order, 1937.
† Inserted by the Indian Income-tax (Second Amendment) Act, 1933 (XVIII of 1933).

(iii) the amount of any annual premium paid to insure the property against risk of damage or destruction, P. 44

*(iv) *where the property is subject to a mortgage, or other capital charge, the amount of any interest on such mortgage or charge, where the property is subject to a ground rent, the amount of such ground rent, and where the property has been acquired with borrowed capital, the amount of any interest payable on such capital and not specifically charged upon the property itself* P. 45.

(v) any sums paid on account of land revenue in respect of the property, P. 69.

(vi) in respect of collection charges a sum not exceeding the prescribed maximum, P. 46. R. 7.

(vii) in respect of vacancies, such sum as the Income tax Officer may determine having regard to the circumstances of the case P. 47, 48.

Provided that the aggregate of the allowances made under this sub section shall in no case exceed the annual value P. 49.

(2) For the purposes of this section, the expression "annual value" shall be deemed to mean the sum for which the property might reasonably be expected to let from year to year P. 41.

Provided that, where the property is in the occupation of the owner for the purposes of his own residence, such sum shall, for the purposes of this section, be deemed not to exceed ten per cent of the total income of the owner P. 41.

Business

10. (1) The tax shall be payable by an assessee under the head "Business" in respect of the profits or gains of any business carried on by him P. 50, 52.

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* Amended by the Indian Income tax (Second Amendment) Act 1933 (XVIII of 1933)

P. 50, 53, 54. (2) Such profits or gains shall be computed after making the following allowances, namely :—

P. 55. (i) any rent paid for the premises in which such business is carried on provided that when any substantial part of the premises is used as a dwelling-house by the assessee, the allowance under this clause shall be such sum as the Income-tax Officer may determine having regard to the proportional part so used;

P. 56. (ii) in respect of repairs, where the assessee is the tenant only of the premises, and has undertaken to bear the cost of such repairs, the amount paid on account thereof, provided that, if any substantial part of the premises is used by the assessee as a dwelling-house, a proportional part only of such amount shall be allowed;

P. 57. (iii) in respect of capital borrowed for the purposes of the business, where the payment of interest thereon is not in any way dependent on the earning of profits, the amount of the interest paid;

Explanation.—Recurring subscriptions paid periodically by shareholders or subscribers in such Mutual Benefit Societies as may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause;

P. 58. (iv) in respect of insurance against risk of damage or destruction of buildings, machinery, plant, furniture, stocks or stores, used for the purposes of the business, the amount of any premium paid;

P. 56. (v) in respect of current repairs to such buildings, machinery, plant, or furniture, the amount paid on account thereof;

(vi) in respect of depreciation of such buildings, machinery, plant, or furniture being the property of the assessee, a sum equivalent to such percentage on the original cost thereof

to the assessee as may in any case or class of cases be prescribed: R. 8-9.

Provided that—

(*a*) the prescribed particulars have been duly furnished;

(*b*) where full effect cannot be given to any such allowance in any year owing to there being no profits or gains chargeable for that year, or owing to the profits or gains chargeable being less than the allowance, the allowance or part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following year and deemed to be part of that allowance, or, if there is no such allowance for that year, be deemed to be the allowance for that year, and so on for succeeding years; and

(*c*) the aggregate of all such allowances made under this Act or any Act repealed hereby, or under the Indian Income-tax Act, 1886, shall, in no case, exceed the original cost to the assessee of the buildings, machinery, plant, or furniture as the case may be,

(*vii*) in respect of any machinery or plant which in consequence of its having become obsolete, has been sold or discarded, the difference between the original cost to the assessee of the *machinery or plant as reduced by the aggregate* of the allowances made in respect of depreciation under clause (*vi*), or any Act repealed hereby, or the Indian Income-tax Act, 1886, and the amount for which the machinery or plant is actually sold, or its scrap value; P. 60.

*(*viia*) in respect of animals which have been used for the purposes of the business otherwise than as stock in trade and have died or P. 61.

**Inserted by the Indian Income-tax (Amendment) Act 1922 (III of 1922)*

P. 50, 53, 54. (2) Such profits or gains shall be computed after making the following allowances, namely:—

P. 55. (i) any rent paid for the premises in which such business is carried on provided that when any substantial part of the premises is used as a dwelling-house by the assessee, the allowance under this clause shall be such sum as the Income-tax Officer may determine having regard to the proportional part so used;

P. 56. (ii) in respect of repairs, where the assessee is the tenant only of the premises, and has undertaken to bear the cost of such repairs, the amount paid on account thereof, provided that, if any substantial part of the premises is used by the assessee as a dwelling-house, a proportional part only of such amount shall be allowed;

P. 57. (iii) in respect of capital borrowed for the purposes of the business, where the payment of interest thereon is not in any way dependent on the earning of profits, the amount of the interest paid;

Explanation.—Recurring subscriptions paid periodically by shareholders or subscribers in such Mutual Benefit Societies as may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause;

P. 58. (iv) in respect of insurance against risk of damage or destruction of buildings, machinery, plant, furniture, stocks or stores, used for the purposes of the business, the amount of any premium paid;

P. 56. (v) in respect of current repairs to such buildings, machinery, plant, or furniture, the amount paid on account thereof;

(vi) in respect of depreciation of such buildings, machinery, plant, or furniture being the property of the assessee, a sum equivalent to such percentage on the original cost thereof

P. 50, 53, 54. (2) Such profits or gains shall be computed after making the following allowances, namely :—

P. 55. (i) any rent paid for the premises in which such business is carried on provided that when any substantial part of the premises is used as a dwelling-house by the assessee, the allowance under this clause shall be such sum as the Income-tax Officer may determine having regard to the proportional part so used;

P. 56. (ii) in respect of repairs, where the assessee is the tenant only of the premises, and has undertaken to bear the cost of such repairs, the amount paid on account thereof, provided that, if any substantial part of the premises is used by the assessee as a dwelling-house, a proportional part only of such amount shall be allowed;

P. 57. (iii) in respect of capital borrowed for the purposes of the business, where the payment of interest thereon is not in any way dependent on the earning of profits, the amount of the interest paid;

Explanation.—Recurring subscriptions paid periodically by shareholders or subscribers in such Mutual Benefit Societies as may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause;

P. 58. (iv) in respect of insurance against risk of damage or destruction of buildings, machinery, plant, furniture, stocks or stores, used for the purposes of the business, the amount of any premium paid;

P. 56. (v) in respect of current repairs to such buildings, machinery, plant, or furniture, the amount paid on account thereof;

59. (vi) in respect of depreciation of such buildings, machinery, plant, or furniture being the property of the assessee, a sum equivalent to such percentage on the original cost thereof

to the assessee as may in any case or class of cases be prescribed R. 8-9.

Provided that—

(a) the prescribed particulars have been duly furnished,

(b) where full effect cannot be given to any such allowance in any year owing to there being no profits or gains chargeable for that year, or owing to the profits or gains chargeable being less than the allowance, the allowance or part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following year and deemed to be part of that allowance, or, if there is no such allowance for that year, be deemed to be the allowance for that year, and so on for succeeding years, and

(c) the aggregate of all such allowances made under this Act or any Act repealed hereby or under
1886 the Indian Income tax Act 1886 shall in no case, exceed the original cost to the assessee of the buildings machinery plant or furniture as the case may be

(vii) in respect of any machinery or plant which in P. 60.
consequence of its having become obsolete has been sold or discarded the difference between the original cost to the assessee of the machinery or plant as reduced by the aggregate of the allowances made in respect of depreciation under clause (vi) or any Act repealed hereby, or the Indian Income tax
1886. Act 1886, and the amount for which the machinery or plant is actually sold or its scrap value,

*(viia) in respect of animals which have been used P. 61.
for the purposes of the business otherwise than as stock in trade and have died or

*Inserted by the Indian Income tax (Amendment) Act 1928 (III of 1928)

become permanently useless for such purposes, the difference between the original cost to the assessee of the animals and the amount, if any, realised in respect of the carcasses or animals;

P. 62, 69. (*viii*) any sums paid on account of land-revenue, local rates or municipal taxes in respect of such part of the premises as is used for the purposes of the business;

P. 63. *(*viiia*) any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission:

Provided that the amount of the bonus or commission is of a reasonable amount with reference to—

(*a*) the pay of the employee and the conditions of his service;

(*b*) the profits of the business for the year in question; and

(*c*) the general practice in similar businesses;

P. 53, 64, 66. (*ix*) any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of earning such profits or gains:

†Provided that nothing in clause (*viii*) or clause (*ix*) shall be deemed to authorise the allowance of any sum paid on account of any cess, rate or tax levied on the profits or gains of any business or assessed at a proportion of or otherwise on the basis of any such profits or gains.

P. 50. (*3*) In sub-section (*2*), the word "paid" means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under this section.

P. 50. **11.** (*1*) The tax shall be payable by an assessee under the head "Professional earnings" in respect of the profits or gains of any profession or vocation followed by him.

Professional earnings.

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* Inserted by the Indian Income-tax (Third Amendment) Act, 1930 (XXIII of 1930).

† Inserted by the Indian Income-tax (Amendment) Act, 1928 (III of 1928).

*(2) *Such profits or gains shall be computed after making the following allowances, namely* — P. 67.

(i) *any expenditure (not being in the nature of capital expenditure) incurred solely for the purposes of such profession or vocation, and not being personal expenses of the assessee,*

(ii) *in respect of depreciation of buildings and depreciation and obsolescence of machinery, apparatus, appliances, plant, furniture or other capital assets being the property of the assessee and used solely for the purposes of such profession or vocation, the allowances specified in clauses (vi) and (vii) of sub section (2) of section 10 subject to all the conditions specified in those clauses*

(3) Professional fees paid in any part of India to a person ordinarily resident in British India shall be deemed to be profits or gains chargeable under this head P. 15.

Other sources

12 (1) The tax shall be payable by an assessee under the head "Other sources" in respect of income, profits and gains of every kind and from every source to which this Act applies (if not included under any of the preceding heads) P. 40.

(2) Such income profits and gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making or earning such income profits or gains provided that no allowance shall be made on account of any personal expenses of the assessee P. 68.

Method of accounting

13. Income profits and gains shall be computed for the purposes of sections 10, 11 and 12 in accordance with the method of accounting regularly employed by the assessee P. 50, 65.

Provided that if no method of accounting has been regularly employed or if the method employed is such that, in the opinion of the Income tax Officer, the income, profits and gains cannot properly be deduced therefrom,

* Substituted by the Indian Income tax (Second Amendment) Act 1933 (XVIII of 1933)

then the computation shall be made upon such basis and in such manner as the Income-tax Officer may determine.

P. 11, 70. **14.** (*1*) The tax shall not be payable by an assessee in respect of any sum which he receives as a member of a Hindu undivided family.

Exemptions of a general nature.

(*2*) The tax shall not be payable by an assessee in respect of-

(*a*) any sum which he receives by way of dividends as a shareholder in a company where the profits or gains of the company have been assessed to income-tax; or

P 10. 71. (*b*) such an amount of the profits or gains of any firm which have been assessed to income-tax as is proportionate to his share in the firm **at the time of such assessment; or*

P. 72. †(*c*) any sum which he receives as his share of the profits or gains of an association of individuals, other than a Hindu undivided family, company or firm, where such profits or gains have been assessed to income-tax.

P. 11. **15.** (*1*) The tax shall not be payable by an assessee in respect of any sums paid by him to effect an insurance on his own life or on the life of his wife, or in respect of a contract for a deferred annuity on his own life or on the life of his wife, or as a contribution to any Provident Fund to which the ‡Provident Funds Act, 1897, applies. IX

Exemption in the case of life insurances.

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(*2*) Where the assessee is a Hindu undivided family, there shall be exempted under sub-section (*1*) any sums paid to effect an insurance on the life of any male member of the family or of the wife of any such member.

P. 11. (*3*) The aggregate of any sums exempted under this section shall not, together with any sums exempted under

*Inserted by the Indian Income-tax (Amendment) Act, 1928 (III of 1928).

†Inserted by the Indian Income-tax (Amendment) Act, 1930 (XXII of 1930).

‡*N.B.*—The reference is now to the Provident Funds Act, 1925 (XIX of 1925).

1Repealed by the Indian Income-tax (Amendment) Act, 1924 (XI of 1924).

the proviso to sub section (*1*) of section 7, **and any sums exempted under sub section* (*1*) *of section 58-F* exceed one sixth of the total income of the assessee **P. 24.**

16. (*1*) In computing the total income of an assessee sums exempted under the proviso to sub section (*1*) of section 7, †*the second and third* provisos to section 8 sub-section (*2*) of section 14 and section 15, shall be included **P. 11.**

Exemptions and exclusions in determining the total income

(*2*) For the purposes of sub section (*1*), any sum mentioned in clause (*a*) of sub section (*2*) of section 14 shall be increased by the amount of income-tax payable by the company in respect of the dividend received **P. 74, 82**

‡(*3*) In computing the total income of any individual for the purpose of assessment, there shall be included—

(*a*) so much of the income of a wife or minor child of such individual as arises directly or indirectly—

(*i*) from the membership of the wife in a firm of which her husband is a partner,

(*ii*) from the admission of the minor to the benefits of partnership in a firm of which such individual is a partner,

(*iii*) from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart or

(*iv*) from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual

and

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*Inserted by the Indian Income tax (Provident Fund Relief) Act 1929 (XII of 1929)

†Inserted by the Indian Income tax (Second Amendment) Act 1933 (XVIII of 1933)

‡ Inserted by the Indian Income tax (Amendment) Act 1937 (IV of 1937)

(*b*) so much of the income of any association of individuals consisting of such individual and his wife as arises from assets transferred to the association by such individual.

P. 11, 75.

Reduction of tax when margin above a certain limit is small.

17. Where owing to the fact that the total income of any assessee has reached or exceeded a certain limit he is liable to pay income-tax or to pay income-tax at a higher rate, the amount of income-tax payable by him shall, where necessary, be reduced so as not to exceed the aggregate of the following amounts, namely :—

(*a*) the amount which would have been payable if his total income had been a sum less by one rupee than that limit, and

(*b*) the amount by which his total income exceeds that sum.

CHAPTER IV.

DEDUCTIONS AND ASSESSMENT.

18. (*1*)*

Payment by deduction at source.

P. 36, 73, 77.

(*2*) Any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax †*but not super-tax* on the amount payable at the rate applicable to the estimated income of the assessee under this head :

* Repealed by the Indian Income-tax (Second Amendment) Act, 1933 (XVIII of 1933).
† Inserted by the Indian Income-tax (Second Amendment) Act, 1933 (XVIII of 1933).

Provided that such person may, at the time of making any deduction, increase or reduce the amount to be deducted under this sub section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct

*(2a) Notwithstanding anything hereinbefore contained, for the purpose of making the deduction under sub section (2), there shall be included in the amount payable any income chargeable under the head 'Salaries' which is payable to the assessee out of India by or on behalf of †*the Crown* and the value in rupees of such income shall be calculated at the prescribed rate of exchange **R. 11-A. P. 76.**

(3) The person responsible for paying any income chargeable under the head "Interest on securities" shall ‡*unless otherwise prescribed in the case of any security of the* †*Central Government* at the time of payment deduct income tax ‡*but not super-tax* on the amount of the interest payable at the maximum rate **P. 34, 39, 78.**

‡*Provided that where the Income tax Officer gives a certificate in writing (which certificate he shall give in every proper case on the application of the assessee) that to the best of his belief the total income of a recipient will be less than the minimum liable to income tax or will be liable to a rate of income tax less than the maximum rate the person responsible for paying any income herein referred to to such recipient shall until such certificate is cancelled by the Income tax Officer, pay the income without deduction or deduct the tax at such less rate, as the case may be.*

‡(3A) Where the Income tax Officer has reason to believe that the total income of any person residing out of British India to whom any interest not being 'Interest on Securities' is payable will in any year exceed the maximum amount which is not chargeable with super tax **P. 80, 131.**

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* Inserted by the Indian Income tax (Second Amendment) Act, 1925 (XVI of 1925)

† The Government of India (Adaptation of Indian Laws) Order 1937

‡ Inserted by the Indian Income tax (Second Amendment) Act 1933 (XVIII of 1933)

under the law for the time being in force, he may, by order in writing, require the person responsible for paying such interest to such person to deduct at the time of payment income-tax and super-tax at the rates determined by the Income-tax Officer to be applicable to the total income of such person in that year.

P. 80, 131. *(3B) Where the person responsible for paying any interest not being 'Interest on Securities' to any person pays to that person in any year an amount of such interest exceeding in the aggregate the maximum amount which is not chargeable with super-tax under the law for the time being in force, the person responsible for paying such interest shall, if he has not reason to believe that the recipient is resident in British India, and no order under sub-section (3A) has been received in respect of such recipient, deduct at the time of payment income-tax on the total amount of such interest at the rate appropriate to such total, and super-tax on the amount by which such total exceeds the maximum amount not chargeable with super-tax at the rate applicable to such excess.

P. 131. *(3C) Where the Income-tax Officer has reason to believe that any person, who is a shareholder in a company, is resident out of British India and that the total income of such person will in any year exceed the maximum amount which is not chargeable to super-tax under the law for the time being in force, he may, by order in writing, require the principal officer of the company to deduct at the time of payment of any dividend from the company to the shareholder in that year super-tax at such rate as the Income-tax Officer may determine as being the rate applicable in respect of the income of the shareholder in that year.

P. 132. *(3D) If in any year the amount of any dividend or the aggregate amount of any dividends paid to any shareholder by a company (together with the amount of any income-tax payable by the company in respect thereof) exceeds the maximum amount of the total income of a

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*Inserted by the Indian Income tax (Second *Amendment*) Act, 1933 (XVIII of 1933).

person which is not chargeable to super-tax under the law for the time being in force, and the principal officer of the company has not reason to believe that the shareholder is resident in British India, and no order under sub-section (*3C*) has been received in respect of such shareholder by the principal officer from the Income-tax Officer the principal officer shall at the time of payment deduct super-tax on the amount of such excess at the rate which would be applicable under the law for the time being in force if the amount of such dividend or dividends (together with the amount of such income-tax as aforesaid) constituted the whole total income of the shareholder.

(*4*) All sums deducted in accordance with the provisions of this section shall, for the purpose of computing the income of an assessee, be deemed to be income received. P. 74.

(*5*) Any deduction made in accordance with the provisions of this section shall be treated as a payment of income-tax **or super-tax* on behalf of the person from whose income the deduction was made, or of the owner of the security, as the case may be, and credit shall be given to him therefor in the assessment, if any, made for the following year under this Act:

Provided that, if such person or such [illegible] in accordance with the provisions of [illegible] any portion of the tax so deducted, [illegible] for the amount of such refund.

†Provided further that [illegible] is a person whose income is [illegible] of sub-section (*3*) of section [illegible] another person that person [illegible] 15. person or owner on whose [illegible] 83. and to whom credit [illegible] the following year.

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*Inserted by the [illegible] of 1933)

† Inserted by the [illegible]

R. 10, 12. P. 76. (6) All sums deducted in accordance with the provisions of this section shall be paid within the prescribed time by the person making the deduction to the credit of the **Central* Government, or as the Central Board of Revenue directs.

(7) If any such person does not deduct and pay the tax as required by †*or under* this section, he shall, without prejudice to any other consequences which he may incur, be deemed to be ‡*an assessee* in default in respect of the tax.

†Provided that the Income-tax Officer shall not make a direction under sub-section *(1)* of section 46 for the recovery of any penalty from such person unless satisfied that such person has wilfully failed to deduct and pay the tax.

(8) The power to levy by deduction under this section shall be without prejudice to any other mode of recovery.

P. 78, 116. (9) Every person deducting income-tax †*or super-tax in* accordance with the provisions of sub-sections (3), †(3A), (3B), (3C) or (3D) shall, at the time of payment of interest, furnish to the person to whom the interest is R. 13. paid a certificate to the effect that income-tax †*or super-tax* has been deducted, and specifying the amount so deducted the rate at which the tax has been deducted, and such other particulars as may be prescribed.

P. 76. 19. In the case of income chargeable under ‡*any head other than "salaries" or "interest on securities"*, and in any case where income-tax has not been deducted in accordance with the provisions of section 18, the tax shall be payable by the assessee direct.

Payment in other cases.

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* The Government of India (Adaptation of Indian Laws) Order, 1937.

† Inserted by the Indian Income-tax (Second Amendment) Act, 1933 (XVIII of 1933).

‡ Substituted by the Indian Income-tax (Second Amendment) Act, 1933 (XVIII of 1933).

***19-A.** The principal officer of every company shall, on or before the 15th day of June in each year, furnish to the prescribed officer a return in the prescribed form and verified in the prescribed manner of the names and of the addresses, as entered in the register of shareholders maintained by the company, of the shareholders to whom a dividend or aggregate dividends exceeding such amount as may be prescribed in this behalf has or have been distributed during the preceding year and of the amount so distributed to each such shareholder

Supply of information regarding dividends

R. 42, 43. P. 87.

20. The principal officer of every company shall, at the time of distribution of dividends, furnish to every person receiving a dividend a certificate to the effect that the company has paid or will pay income tax on the profits which are being distributed and specifying such other particulars as may be prescribed

Certificate by company to shareholders receiving dividends

P. 83, 116. R. 14.

†20-A. The person responsible for paying any interest not being 'Interest on Securities' shall, on or before the fifteenth day of June in each year, furnish to the prescribed officer a return in the prescribed form and verified in the prescribed manner of the names and addresses of all persons to whom during the previous financial year he has paid interest or aggregate interest exceeding such amount not being less than one thousand rupees as may be prescribed in this behalf, together with the amount paid to each such person

Supply of information regarding interest

R. 43-A

21. The prescribed person in the case of every Government office, and the principal officer or the prescribed person in the case of every local authority, company or other public body or

Annual return

R. 15. P. 83.

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*Inserted by the Indian Income-tax (Amendment) Act, 19[illegible] ([illegible] of 19[illegible])
† Inserted by the Indian Income-tax ([illegible] Amendment) Act, 19[illegible] (XVIII of 1933)

may require, on specified points, shall, by an order in writing, assess the total income of the assessee, and determine the sum payable by him on the basis of such assessment.

P. 88, 89. (4) If the principal officer of any company or any other person fails to make a return under sub-section (1) or sub-section (2) of section 22, as the case may be, or fails to comply with all the terms of a notice issued under sub-section (4) of the same section or, having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of this section, the Income-tax Officer shall make the assessment to the best of his judgment *and, in the case of a registered firm, may cancel its registration.

*Provided that the registration of a firm shall not be cancelled until fourteen days have elapsed from the issue of a notice by the Income-tax Officer to the firm intimating his intention to cancel its registration.

P. 72. *23-A. (1) Where the Income-tax Officer is satisfied that any firm or other association of individuals carrying on any business, other than a Hindu undivided family or a company, is under the control of one member thereof, and that such firm or association has been formed or is being used for the purpose of evading or reducing the liability to tax of any member thereof, he may, with the previous approval of the Assistant Commissioner, pass an order that the sum payable as income-tax by the firm or association shall not be determined, and thereupon the share of each member in the profits and gains of the firm or association shall be included in his total income for the purpose of his assessment thereon.

Power to assess individual members of certain firms, associations and companies.

Explanation.—A member of a firm or association who owns the whole or the major portion of the capital of the firm or association shall not by reason only of that fact be deemed to control the firm or association.

(2) Where the Income-tax Officer is satisfied that a company is under the control of not more than five of its members and that its profits and gains are allowed to accumulate beyond its reasonable needs, existing and

*Inserted by the Indian Income-tax (Amendment) Act, 1930 (XXI of 1930)

contingent, having regard to the maintenance and development of its business, without being distributed to the members, or that a reasonable part of its profits and gains having regard to the said needs, has not been distributed to its members in such manner as to render the amount distributed liable to be included in their total income, and that such accumulation or failure to distribute is for the purpose of preventing the imposition of tax upon any of the members in respect of their shares in the profits and gains so accumulated or not distributed, the Income tax Officer may, with the previous approval of the Assistant Commissioner, pass an order that the sum payable as income-tax by the company shall not be determined and thereupon the proportionate share of each member in the profits and gains of the company whether such profits and gains have been distributed to the members or not shall be included in the total income of such member for the purpose of his assessment thereon

Provided that this sub section shall not apply to any company which is a subsidiary company or in which the public are substantially interested

Explanation —For the purpose of this sub section —

(*a*) a company shall be deemed to be a subsidiary company, if by reason of the beneficial ownership of shares therein the control of the company is in the hands of a company not being a company to which the provisions of this sub-section apply or of two or more companies none of which is a company to which those provisions apply,

(*b*) a company shall be deemed to be a company in which the public are substantially interested if shares of the company (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than twenty five per cent of the voting power have been allotted unconditionally to, or acquired unconditionally by, and are at the end of the previous year beneficially held by, the public (not including a company to which the provisions of this sub section

gains which have escaped assessment or have been assessed at too low a rate in respect of which he is debarred from issuing a notice under section 34.

(2) For the purpose of making an assessment under sub-section (1), the Income-tax Officer may serve a notice upon such person requiring him to furnish, within such time not being less than seven days as may be specified in the notice, a return in the same form and verified in the same manner as a return under sub-section (2) of section 22, setting forth (along with such other particulars as may be provided for in the notice) his total income for each of the completed previous years comprised in the period first referred to in sub-section (1) and his estimated total income for the period from the expiry of the last such completed previous year to the probable date of his departure; and the provisions of this Act shall, so far as may be, apply as if the notice were a notice issued under sub-section (2) of section 22.

P. 93.

Tax of deceased person payable by representative.

*24B. (1) Where a person dies, his executor, administrator or other legal representative shall be liable to pay out of the estate of the deceased person to the extent to which the estate is capable of meeting the charge the tax assessed as payable by such person, or any tax which would have been payable by him under this Act if he had not died.

(2) Where a person dies before he is served with a notice under sub-section (2) of section 22 or section 34, as the case may be, the Income-tax Officer may serve on his executor, administrator or other legal representative a notice under sub-section (2) of section 22 or under section 34, as the case may be, and may proceed to assess the total income of the deceased person as if such executor, administrator or other legal representative were the assessee.

(3) Where a person dies, without having furnished a return which he has been required to furnish under the provisions of sub-section (2) of section 22, or having furnished a return which the Income-tax Officer has reason to believe to be incorrect or incomplete, the

*Inserted by the Indian Income-tax (Second Amendment) Act, 1933 (XVIII of 1933).

Income-tax Officer may make an assessment of the total income of such person and determine the tax payable by him on the basis of such assessment, and for this purpose may require from the executor, administrator or other legal representative of the deceased person any accounts, documents or other evidence which he might under the provisions of sections 22 and 23 have required from the deceased person

Assessment in case of discontinued business

25. (*1*) Where any business, profession or vocation [1]*on which income-tax was not at any time charged under the provisions of the Indian Income-tax Act 1918*, is discontinued in any year, an assessment may be made in that year on the basis of the income, profits or gains of the period between the end of the previous year and the date of such discontinuance in addition to the assessment, if any, made on the basis of the income, profits or gains of the previous year **P. 14, 96.**

(*2*) Any person discontinuing any such business profession or vocation shall give to the Income tax Officer notice of such discontinuance within fifteen days thereof, and, where any person fails to give the notice required by this sub section, the Income tax Officer may direct that a sum shall be recovered from him by way of penalty not exceeding the amount of tax subsequently assessed on him in respect of any income, profits or gains of the business profession or vocation up to the date of its discontinuance **P. 96.**

(*3*) Where any business, profession or vocation [2]* * * on which tax was at any time charged under the provisions of the Indian Income tax Act, 1918, is discontinued no tax shall be payable in respect of the income, profits and gains of the period between the end of the previous year and the date of such discontinuance, and the assessee may further claim that the income profits and gains of the previous year shall be deemed to have been the income profits and gains of the said period Where any such claim is made, an assessment shall be made on the basis of the income, profits and gains of the **P. 14, 96.**

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[1] Amended by the Indian Income tax (Amendment) Act 1924 (XI of 1924)

[2] Repealed by the Indian Income tax (Amendment) Act 1924 (XI of 1924)

registration for the purposes of this Act and of any other enactment for the time being in force relating to income-tax or super-tax.

R. 2—6. (2) The application shall be made by such person or persons, and at such times and shall contain such particulars and shall be in such form, and be verified in such manner, as may be prescribed; and it shall be dealt with by the Income-tax Officer in such manner as may be prescribed.

P. 86. 27. Where an assessee or, in the case of a company, the principal officer thereof, within one month from the service of a notice of demand issued as hereinafter provided, satisfies the Income-tax Officer that he was prevented by sufficient cause from making the return required by section 22, or that he did not receive the notice issued under sub-section (4) of section 22, or sub-section (2) of section 23, or that he had not a reasonable opportunity to comply, or was prevented by sufficient cause from complying, with the terms of the last-mentioned notices, the Income-tax Officer shall cancel the assessment and proceed to make a fresh assessment in accordance with the provisions of section 23.

Cancellation of assessment when cause is shown.

P. 86, 87. *28. (1) If the Income-tax Officer, the Assistant Commissioner or the Commissioner, in the course of any proceedings under this Act, is satisfied that an assessee has concealed the particulars of his income or has deliberately furnished inaccurate particulars of such income, and has thereby returned it below its real amount, he may direct that the assessee shall, in addition to the income-tax payable by him, pay by way of penalty a sum not exceeding the amount of the income-tax which would have been avoided if the income so returned by the assessee had been accepted as the correct income.

Penalty for concealment of income or improper distribution of profits.

(2) If the Income-tax Officer, the Assistant Commissioner or the Commissioner, in the course of any proceedings under this Act, is satisfied that the profits of a registered firm have been distributed otherwise than in

*Substituted for the original section by the Indian Income-tax (Amendment) Act, 1930 (XXI of 1930).

accordance with the shares of the partners as shown in the instrument of partnership registered under this Act governing such distribution, and that any partner has thereby returned his income below its real amount he may direct that such partner shall, in addition to the income tax payable by him, pay by way of penalty a sum not exceeding the amount of income tax which has been avoided, or would have been avoided if the income returned by such partner had been accepted as his correct income, and no refund or other adjustment shall be claimable by any other partner by reason of such direction

(*3*) No order shall be made under sub section (*1*) or sub section (*2*) unless the assessee or partner as the case may be, has been heard or has been given a reasonable opportunity of being heard

(*4*) No prosecution for an offence against this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section

(*5*) An Assistant Commissioner or a Commissioner who has made an order under sub section (*1*) or sub section (*2*) shall forthwith send a copy of the same to the Income tax Officer

Notice of demand

29. When the Income tax Officer has determined a sum to be payable by an assessee under section 23 or when an order has been passed under sub section (*2*), of section 25 or section 28 for the payment of a penalty the Income tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum so payable **P. 100, R. 20.**

Appeal against assessment under this Act

30 (*1*) Any assessee objecting to the amount or rate at which he is assessed under section 23 or section 27 or denying his liability to be assessed under this Act or objecting to a refusal of an Income tax Officer **to register a firm under section 26 A or* to make a fresh assessment under section 27 or to any order against him under sub section (*2*) of section 25 †*or section 25 A* or section 28, made by an Income tax Officer may appeal to the Assistant Commissioner against the assessment or against such refusal or order **P. 51, 86, 88, 101, 140.**

*Inserted by the Indian Income tax (Second Amendment) Act 1933 (XVIII of 1933)

†Inserted by the Indian Income tax (Amendment) Act 1930 (XXI of 1930)

Provided that no appeal shall lie in respect of an assessment made under sub-section (*4*) of section 23, or under that sub-section read with section 27.

P. 101. (*2*) The appeal shall ordinarily be presented within thirty days of receipt of the notice of demand relating to the assessment or penalty objected to, **or of the intimation of the refusal †to pass an order under sub-section (1) of section 25-A , or to register a firm under section 26-A*, or of the date of the refusal to make a fresh assessment under section 27. as the case may be; but the Assistant Commissioner may admit an appeal after the expiration of the period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

R. 21. (*3*) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

P. 102, 103. 31. (*1*) The Assistant Commissioner shall fix a day and place for the hearing of the appeal, and may from time to time adjourn the hearing.

Hearing of appeal.

(*2*) The Assistant Commissioner may, before disposing of any appeal, make such further inquiry as he thinks fit, or cause further inquiry to be made by the Income-tax Officer.

(*3*) In disposing of an appeal the Assistant Commissioner may, in the case of an order of assessment,—

(*a*) confirm, reduce, enhance or annul the assessment, or

(*b*) set aside the assessment and direct the Income-tax Officer to make a fresh assessment after making such further inquiry as the Income-tax Officer thinks fit or the Assistant Commissioner may direct, and the Income-tax Officer shall thereupon proceed to make such fresh assessment.

*‡or, in the case of an order refusing *to register a firm under section 26-A ‡, or to make a fresh assessment under section 27*,

*Inserted by the Indian Income-tax (Second Amendment) Act, 1933 (XVIII of 1933).

† Inserted by Repealing and Amending Act, 1937 (XX of 1937).

‡ Inserted by the Indian Income-tax (Second Amendment) Act, 1930 (XXII of 1930).

(c) *confirm such order, or cancel it and direct the Income tax Officer *to register the firm or to make a fresh assessment* as the case may be,*

or, in the case of an order under sub section (2) of section 2 or section 28,—

(d) confirm, cancel or vary such order

Provided that the Assistant Commissioner shall not enhance an assessment unless the appellant has had a reasonable opportunity of showing cause against such enhancement

Appeals against orders of Assistant Commissioner

32. (1) Any assessee objecting to an order passed by an Assistant Commissioner under section 28 or to an order enhancing his assessment under sub section (3) of section 31, may appeal to the Commissioner within thirty days of †*the date on which he was served with notice of such order* **P. 103** **140**

(2) The appeal shall be in the prescribed form, and shall be verified in the prescribed manner **R. 22** **P. 87.**

(3) In disposing of the appeal the Commissioner may, after giving the appellant an opportunity of being heard, pass such orders thereon as he thinks fit

Power of review

33. (1) The Commissioner may of his own motion call for the record of any proceeding under this Act which has been taken by any authority subordinate to him or by himself when exercising the power of an Assistant Commissioner under sub section (4) of section 5 **P. 104**

(2) On receipt of the record the Commissioner may make such enquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such orders thereon as he thinks fit

Provided that he shall not pass any order prejudicial to an assessee without hearing him or giving him a reasonable opportunity of being heard

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*Inserted by the Indian Income tax (Second Amendment) Act 1933 (XVIII of 1933)

†Substituted by the Indian Income tax (Second Amendment) Act, 1933 (XVIII of 1933)

*33-A. (1) Any person aggrieved by an order of an Income-tax Officer under sub-section (1) or sub-section (2) of section 23-A may, within thirty days of the date on which he was served with notice of such order, lodge an appeal in the office of the Commissioner.

Reference to Board of Referees.

R. 22-A. (2) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

P. 104-A. (3) The Commissioner shall refer such appeal, with a statement of his own opinion thereon, to a Board of Referees for decision; and the Board of Referees shall decide the appeal after hearing the appellant and any person deputed by the Commissioner:

Provided that, before making a reference to a Board of Referees, the Commissioner may, and at the request of the appellant shall, in exercise of his powers of revision under section 33, decide the matters in dispute, and thereupon the assessee may withdraw his appeal or proceed with it.

(4) The decision of the Board of Referees shall be forwarded to the Commissioner who shall transmit it to the Income-tax Officer who passed the original order, and shall also send copies to each Income-tax Officer who has made any assessment consequent upon such order; and where a decision reverses or modifies the order of the Income-tax Officer, fresh assessments shall be made in accordance therewith, or such consequential adjustments as may be required shall be made in any assessment already made.

P. 104. (5) The decision of a Board of Referees shall not be subject to appeal to any Income-tax authority, and shall not be revised by the Commissioner in exercise of his powers under section 33.

(6) A Board of Referees shall consist of not less than three and not more than five persons, of whom not less than one-half shall be non-officials having business experience, and one shall be a judicial officer not inferior in rank to a Subordinate Judge or a Judge of a Small Cause Court who has held judicial office for a period of not less than ten years.

* Inserted by the Indian Income-tax (Second Amendment) Act, 1930 (XXII of 1930).

(7) Subject to the provisions of sub section (6), the Central Board of Revenue may make rules regulating the formation, composition and procedure of Boards of Referees

34 If for any reason income, profits or gains chargeable to income tax has escaped assessment in any year or has been assessed at too low a rate, the Income tax Officer may at any time within one year of the end of that year serve on the person liable to pay tax on such income, profits or gains, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub section (2) of section 22 and may proceed to assess or re assess such income, profits or gains and the provisions of this Act shall, so far as may be apply accordingly as if the notice were a notice issued under that sub section P. 87, 105.

Income escaping assessment

Provided that the tax shall be charged at the rate at which it would have been charged had the income, profits or gains not escaped assessment or full assessment as the case may be

35. *(1) *The Commissioner or Assistant Commissioner may, at any time within one year from the date of any order passed by him in appeal or, in the case of the Commissioner, in revision under section 33 and* the Income tax Officer may at any time within one year from the date of any demand made upon an assessee, on his own motion rectify any mistake apparent from the record of the **appeal revision or assessment, as the case may be*, and shall within the like period rectify any such mistake which has been brought to his notice by **the* assessee P. 106.

Rectification of mistake

Provided that no such rectification shall be made, having the effect of enhancing an assessment unless the **Commissioner, the Assistant Commissioner or the Income tax Officer, as the case may be,* has given notice to the assessee of his intention so to do and has allowed him a reasonable opportunity of being heard

*Amended by the Indian Income tax (Amendment) Act 1928 (III of 1928)

(2) Where any such rectification has the effect of reducing the assessment, the Income-tax Officer shall make any refund which may be due to such assessee.

(3) Where any such rectification has the effect of enhancing the assessment, the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 29, and the provisions of this Act shall apply accordingly.

P. 107.

Tax to be calculated to nearest anna.

36. In the determination of the amount of tax or of a refund payable under this Act, fractions of an anna less than six pies shall be disregarded, and fractions of an anna equal to or exceeding six pies shall be regarded as one anna.

P. 89.

Power to take evidence on oath, etc.

37. The Income-tax Officer, Assistant Commissioner and Commissioner shall, for the purposes of this Chapter, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely:— V of 1

(a) enforcing the attendance of any person and examining him on oath or affirmation;

(b) compelling the production of documents; and

(c) issuing commissions for the examination of witnesses;

P. 89.

and any proceeding before an Income-tax Officer, Assistant Commissioner or Commissioner under this Chapter shall be deemed to be a "judicial proceeding" within the meaning of sections 193 and 228 **and for the purposes of section 196* of the Indian Penal Code. *XLV of 1860.*

P. 89.

Power to call for information.

38. The Income-tax Officer or Assistant Commissioner may, for the purposes of this Act,—

(1) require any firm, or Hindu undivided family to furnish him with a return of the members of the firm, or of the manager or adult male members of the family, as the case may be, and of their addresses;

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*Inserted by the Indian Income-tax (Second Amendment) Act, 1930 (XXII of 1930).

(2) require any person whom he has reason to believe to be a trustee guardian or agent, to furnish him with a return of the names of the persons for or of whom he is trustee guardian, or agent, and of their addresses

*(3) *require any person whom he has reason to believe to be engaged in business, to furnish him with a return containing particulars of the location and style of his principal place of business and of his branch businesses, if any, the names and addresses of his partners in any business, and the extent of his own share and the shares of all such partners in the profits of such business or businesses*

Power to inspect the register of members of any company

39. The Income tax Officer or Assistant Commissioner, or any person authorised in writing in this behalf by the Income tax Officer or Assistant Commissioner, may inspect and, if necessary take copies or cause copies to be taken, of any register of the members, debenture holders or mortgagees of any company or of any entry in such register **P. 89.**

CHAPTER V

LIABILITY IN SPECIAL CASES

Guardians trustees and agents

40. In the case of any guardian, trustee or agent of any person being a minor lunatic or idiot or residing out of British India (all of which persons are hereinafter in this section included in the term "beneficiary") being in receipt on behalf of such beneficiary of any income, profits or gains chargeable under this Act, the tax shall be levied upon and recoverable from such guardian trustee or agent, as the case may be in like manner and to the same amount as it would be leviable upon and recoverable from any such beneficiary if of full age, sound mind or resident in British India and in direct receipt of such income, profits or gains and all the provisions of this Act shall apply accordingly **P. 108.**

*Inserted by the Indian Income tax (Second Amendment) Act 1933 (XVIII of 1933)

P. 108. **41.** In the case of income, profits or gains chargeable under this Act which are received by the Courts of Wards, the Administrators-General, the Official Trustees or by any receiver or manager (including any person whatever his designation who in fact manages property on behalf of another) appointed by or under any order of a Court, the tax shall be levied upon and recoverable from such Court of Wards, Administrator-General, Official Trustee, receiver or manager in the like manner and to the same amounts as it would be leviable upon and recoverable from any person on whose behalf such income, profits or gains are received, and all the provisions of this Act shall apply accordingly.

Courts of Wards, etc.

P. 15, 69, 110, 111. R. 33. **42.** (*1*) In the case of any person residing out of British India, all profits or gains accruing or arising to such person, whether directly or indirectly, through or from any business connection or property in British India, shall be deemed to be income accruing or arising within British India, and shall be chargeable to income-tax in the name of the agent of any such person, and such agent shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax :

Non residents.

P. 115. Provided that any arrears of tax may be recovered also in accordance with the provisions of this Act from any assets of the non-resident person which are, or may at any time come, within British India.

P. 111. (*2*) Where a person not resident in British India, and not being a British subject or a firm or company constituted within His Majesty's dominions or a branch thereof, carries on business with a person resident in British India, and it appears to the Income-tax Officer or the Assistant Commissioner, as the case may be, that owing to the close connection between the resident and the non-resident person and to the substantial control exercised by the non-resident over the resident, the course of business between those persons is so arranged, that the business done by the resident in pursuance of his connection with the non-resident produces to the resident either no profits or less than the ordinary profits which

might be expected to arise in that business, the profits derived therefrom or which may reasonably be deemed to have been derived therefrom, shall be chargeable to income tax in the name of the resident person who shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income tax

*(3) Where any profits or gains have accrued or arisen to any person directly or indirectly from the sale in British India by him or by any agency or branch on his behalf of any merchandise exported to British India by him or any agency or branch on his behalf from any place outside British India the profits or gains shall be deemed to have accrued and arisen and to have been received in British India, and no allowance shall be made under sub section (2) of section 10 in respect of any buying or other commission whatsoever not actually paid or of any other amounts not actually spent for the purpose of earning such profits or gains

Agents to include persons treated as such

43. Any person employed by or on behalf of a person residing out of British India, or having any business connection with such person or through whom such person is in the receipt of any income, profits or gains upon whom the Income tax Officer has caused a notice to be served of his intention of treating him as the agent of the non resident person shall, for all the purposes of this Act, be deemed to be such agent P. 111.

Provided that no person shall be deemed to be the agent of a non resident person, unless he has had an opportunity of being heard by the Income tax Officer as to his liability

Liability in case of a discontinued firm or partnership

44 Where any business, profession or vocation carried on by a firm has been discontinued, every person who was at the time of such discontinuance a member of such firm shall be jointly and severally liable for the amount of the tax payable in respect of the income profits and gains of the firm P. 96.

*Inserted by the Indian Income tax (Amendment) Act [illegible]

CHAPTER V-A.*

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF SHIPPING.

P. 114.

Liability to tax of occasional shipping.

44-A. The provision of this Chapter shall, notwithstanding anything contained in the other provisions of this Act, apply for the purpose of the levy and recovery of tax in the case of any person who resides out of British India and carries on business in British India in any year as the owner or charterer of a ship (such person hereinafter in this Chapter being referred to as the principal), unless the Income-tax Officer is satisfied that there is an agent of such principal from whom the tax will be recoverable in the following year under the other provisions of this Act.

Return of profits and gains.

44-B. (*1*) Before the departure from any port in British India of any ship in respect of which the provisions of this Chapter apply, the master of the ship shall prepare and furnish to the Income-tax Officer a return of the full amount paid or payable to the principal, or to any person on his behalf, on account of the carriage of all passengers, live-stock or goods shipped at that port since the last arrival of the ship thereat.

(*2*) On receipt of the return, the Income-tax Officer shall assess the amount referred to in sub-section (*1*), and for this purpose may call for such accounts or documents as he may require, and one-twentieth of the amount so assessed shall be deemed to be the amount of the profits and gains accruing to the principal on account of the carriage of the passengers, live-stock and goods shipped at the port.

(*3*) When the profits and gains have been assessed as aforesaid, the Income-tax Officer shall determine the sum payable as tax thereon at the rate for the time being applicable to the total income of a company, and such sum shall be payable by the master of the ship, and a port-clearance shall not be granted to the ship until the Customs-collector, or other officer duly authorised to grant the same, is satisfied that the tax has been duly paid.

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*Inserted by the Indian Income-tax (Further Amendment) Act, 1923 (XXVII of 1923).

44-C. Nothing in this Chapter shall be deemed to prevent a principal from claiming, in any year following that in which any payment has been made on his behalf under this Chapter, that an assessment be made of his total income in the previous year, and that the tax payable on the basis thereof be determined in accordance with the other provisions of this Act and, if he so claims, any such payment as aforesaid shall be treated as a payment in advance of the tax and the difference between the sum so paid and the amount of tax found payable by him shall be paid by him or refunded to him, as the case may be

Adjustment

CHAPTER VI

Recovery of Tax and Penalties

45. Any amount specified as payable in a notice of demand **under sub section (4) of section 23 A or* under section 29 or an order under section 31 or section 32 or section 33, shall be paid within the time, at the place and to the person mentioned in the notice or order or if a time is not so mentioned, then on or before the first day of the second month following the date of the service of the notice or order, and any assessee failing so to pay shall be deemed to be in default, provided that, when an assessee has presented an appeal under section 30 **or under section 33 A*, the Income tax Officer may in his discretion treat the assessee as not being in default as long as such appeal is undisposed of **P. 115.**

Tax when payable

46 (*1*) When an assessee is in default in making a payment of income tax the Income tax Officer may in his discretion direct that, in addition to the amount of the arrears a sum not exceeding that amount shall be recovered from the assessee by way of penalty **P. 115.**

Mode and time of recovery

†(*1 A*) For the purposes of sub section (*1*) the Income tax Officer may direct the recovery of any sum less than the amount of the arrears and may enhance the sum

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*Inserted by the Indian Income tax (Amendment) Act 1930 (XXI of 1930)
†Inserted by the Indian Income tax (Amendment) Act 1928 (III of 1928)

so directed to be recovered from time to time in the case of a continuing default, so however that the total sum so directed to be recovered shall not exceed the amount of the arrears payable.

P. 115. (2) The Income-tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee, and the Collector, on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land revenue.

**Provided that without prejudice to any other powers of the Collector in this behalf, he shall for the purpose of recovering the said amount have in respect of the attachment and sale of debts due to the assessee the powers which under the Code of Civil Procedure, 1908, a Civil Court has in respect of the attachment and sale of debts due to a judgment debtor for the purpose of the recovery of an amount due under a decree.*

P. 115. (3) In any area, with respect to which the Commissioner has directed that any arrears may be recovered by any process enforceable for the recovery of an arrear of any municipal tax or local rate imposed under any enactment for the time being in force in any part of the province, the Income-tax Officer may proceed to recover the amount due by such process.

P. 115. (4) The Commissioner may direct by what authority any powers or duties incident under any such enactment as aforesaid to the enforcement of any process for the recovery of a municipal tax or local rate shall be exercised or performed when that process is employed under sub-section (3).

P. 115. (5) If any assessee is in receipt of any income chargeable under the head "Salaries," the Income-tax Officer may require any person paying the same to deduct from any payment subsequent to the date of such requisition any arrears due from such assessee, and such person shall comply with any such requisition and shall pay the sums so deducted to the credit of the †*Central* Government, or as the Central Board of Revenue directs.

*Inserted by the Indian Income-tax (Second Amendment) Act, 1933 (XVIII of 1933).

†Government of India (Adaptation of Indian Laws) Order, 1937.

*(6) If the recovery of income tax in any area has been entrusted to a Provincial Government under section 124 (1) of the Government of India Act 1935, the Provincial Government may direct with respect to that area or any part thereof, that income tax shall be recovered therein with, and as an addition to any municipal tax or local rate by the same person and in the same manner as the municipal tax or local rate is recovered

(7) Save in accordance with the provisions of sub section (1) of section 42, no proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the last day of the year in which any demand is made under this Act P. 115.

Recovery of penalties

47. Any sum imposed by way of penalty under the provisions of sub section (2) of section 25 section 28 or sub section (1) of section 46 shall be recoverable in the manner provided in this Chapter for the recovery of arrear of tax P. 115.

CHAPTER VII

REFUNDS

Refunds

48. (1) If a shareholder in a company who has received any dividend therefrom satisfies the Income tax Officer †*or other authority appointed by the *Central Government in this behalf* that the rate of income tax applicable to the profits or gains of the company at the time of the declaration of such dividend is greater than the rate applicable to his total income of the year in which such dividend was declared ‡*or that his total income in such year is below the minimum chargeable with income tax* he shall, on production of the certificate received by him under the provisions of section 20 be entitled to a refund on the amount of such dividend (including the amount of the tax thereon) calculated at the difference between those rates ‡*or at the rate applicable to the profits and gains of the company at the time of the declaration of such dividend, as the case may be* P. 11, 89, 116.

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* Government of India (Adaptation of Indian Laws) Order 1937

† Inserted by the Indian Income tax (Second Amendment) Act 1930 (XXII of 1930)

‡ Inserted by the Indian Income tax (Second Amendment) Act 1933 (XVIII of 1933)

P. 10, 11, 71, 94, 116. (2) If a member of a registered firm **or any person who being a minor has been admitted to the benefits of partnership in such firm* satisfies the Income-tax Officer *†or other authority appointed by the ‡Central Government in this behalf* that the rate of income-tax applicable to his total income of the previous year was less than the rate at which income-tax has been levied on the profits or gains of the firm of that year **or that his total income of the previous year was below the minimum chargeable with income-tax*, he shall be entitled to a refund on his share of those profits or gains calculated at the difference between those rates **or at the rate at which income-tax has been levied, as the case may be.*

P. 11, 76, 78, 116. (3) If the owner of a security from the interest on which, or any person from whose salary, income-tax has been deducted in accordance with the provisions of section 18, satisfies the Income-tax Officer *†or other authority appointed by the ‡Central Government in this behalf* that the rate of income-tax applicable to his total income of the previous year was less than the rate at which income-tax has been charged in making such deduction in that year **or that his total income of the previous year was below the minimum chargeable with income-tax*, he shall be entitled to a refund on the amount of interest or salary from which such deduction has been made calculated at the difference between those rates **or at the rate at which income-tax has been deducted, as the case may be.*

§(3-A) Where the shareholder referred to in sub-section (1), or the member of a registered firm or the minor admitted to the benefits of partnership referred to in sub-section (2), or the owner of a security referred to in sub-section (3) is a person whose income is included under the provisions of sub-section (3) of section 16 in the total income of another person, the provisions of sub-sections (1), (2) and (3) shall apply as if that person were himself the person entitled to a refund under those sub-sections.

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*Inserted by the Indian Income-tax (Second Amendment) Act, 1933 (XVIII of 1933).

† Inserted by the Indian Income-tax (Second Amendment) Act, 1930 (XXII of 1933).

‡ Government of India (Adaptation of Indian Laws) Order, 1937.

§ Inserted by Indian Income-tax (Amendment) Act, 1937 (IV of 1937).

*(4) For the purposes of this section 'total income' includes, in the case of any person not resident in British India, all income, profits and gains wherever arising, accruing or received, which, if arising accruing or received in British India, would be included in the computation of total income under section 16 **P. 116.**

*(5) Nothing in this section shall entitle to any refund any person not resident in British India who is neither a British subject as defined in section 27 of the British Nationality and Status of Aliens Act 1914 nor a subject of a State in India **P. 116.**

General power to make refunds

†**48-A.** (1) If in any case not provided for by section 48 or by the provisions relating to refunds elsewhere contained in this Act the Income tax Officer is satisfied upon claim made in this behalf, that tax has been paid by or on behalf of any person with which he was not properly chargeable or which was in excess of the amount with which he was properly chargeable, the Income tax Officer shall allow a refund to such person of the amount so paid or so paid in excess **P. 117.**

(2) The Assistant Commissioner in the exercise of his appellate powers or the Commissioner in the exercise of his appellate powers or powers of revision is satisfied to the like effect shall in like manner cause a refund to be made by the Income tax Officer of any amount [illegible] to have been wrongly paid or paid in excess

(3) Nothing in this section shall operate [illegible] any objection or appeal which is otherwise [illegible] to authorise the revision of any assessment or [illegible] which has become final and conclusive or [illegible] any officer of a decision of his own [illegible] appeal or revision, or where any relief is [illegible] vided elsewhere in this Act, to entitle [illegible] relief other or greater than that [illegible]

Relief in respect of United Kingdom [in]ome tax

49. (1) If any person who has [illegible] tax for any year [illegible] income proves [illegible] Income tax O[illegible]

* Inserted by the Indian Income tax [illegible]
† Inserted by the Indian Income-tax [illegible] of 1933)

United Kingdom income-tax for that year in respect of the same part of his income, and that the rate at which he was entitled to, and has obtained, relief under the provision of section 27 of the Finance Act, 1920, is less than the Indian rate of tax charged in respect of that part of his income, he shall be entitled to a refund of a sum calculated on that part of his income at a rate equal to the difference between the Indian rate of tax **or the appropriate rate of United Kingdom income-tax, whichever is less*, and the rate at which he was entitled to, and obtained, relief under that section: 10 & 11 Geo. 5 c. 18.

(2) In sub-section (1)—

(a) the expression "Indian income-tax" means income-tax and super-tax charged in accordance with the provisions of this Act;

(b) the expression "Indian rate of tax" means the amount of the Indian income-tax divided by the income on which it was charged;

(c) the expression "United Kingdom income-tax" means income-tax and super-tax chargeable in accordance with the provisions of the Income-tax Acts.

*(d) the expression 'appropriate rate of United Kingdom income-tax' has the meaning assigned to that expression in section 27 of the Finance Act, 1920, as amended by the Finance Act, 1927.

Power to set off amount of refunds against tax remaining payable.

†49-A. Where under any of the provisions of this Act, a refund is found to be due to any person, the Income-tax Officer, Assistant Commissioner or Commissioner, as the case may be, may, in lieu of payment of the refund, set off the amount to be refunded, or any part of that amount against the tax, if any, remaining payable by the person to whom the refund is due.

P. 118.

Power of representative of deceased person or person disabled to make claim on his behalf.

†49-B. Where through death, incapacity bankruptcy liquidation or other cause, a person who would but for such cause have been entitled to a refund under any of the provisions of this Act, or to

* Inserted by the Indian Income tax (Amendment) Act, 1934 (XXIX of 1934).
†Inserted by the Indian Income tax (Second Amendment) Act, 1933 (XVIII of 1933).

make a claim under section 48 or 48 A or 49, is unable to receive such refund or to make such claim his executor, administrator or other legal representative, or the trustee or receiver, as the case may be, shall be entitled to receive such refund or to make such claim for the benefit of such person or his estate

Limitation of claims for refund

50. No claim to any refund of income tax under this Chapter shall be allowed unless it is made within one year from the last day of the year in which the tax was recovered **or before the last day of the financial year commencing after the expiry of the "previous year", as defined in clause (11) of section 2 in which the income arose on which the tax was recovered whichever period may expire later Provided that a claim to refund under section 49 may be admitted after the period of limitation herein prescribed when the applicant satisfies the Commissioner or an Assistant Commissioner of Income tax specially empowered in this behalf by the Central Board of Revenue that he had sufficient cause for not making the claim within such period* **P. 126.**

Appeal against refusal of refund

†**50-A.** (1) Any person objecting to a refusal of an Income tax Officer to allow a claim to a refund under section 48 or 48 A or 49 or to the amount of the refund made in any such case, may appeal to the Assistant Commissioner **P. 127.**

(2) The appeal shall be presented within thirty days of the date on which the refusal of the refund or the amount of the refund allowed was communicated to the appellant

(3) The appeal shall be made in the prescribed form and shall be verified in the prescribed manner **R. 21-A.**

(4) The Assistant Commissioner may, after giving the appellant an opportunity of being heard, pass such orders as he thinks fit

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*Inserted by the Indian Income tax (Second Amendment) Act, 1930 (XXII of 1930)

†Inserted by the Indian Income tax (Second Amendment) Act 1933 (XVIII of 1933)

CHAPTER VIII.

OFFENCES AND PENALTIES.

P. 83, 84, 85, 86, 88. **51.** If a person fails without reasonable cause or excuse— P. 7

Failure to make payments or deliver returns or statements or allow inspection.

(*a*) to deduct and pay any tax as required by section 18 or under sub-section (5) of section 46;

(*b*) to furnish a certificate required by sub-section (*g*) of section 18 or by section 20 to be furnished:

(*c*) to furnish in due time any of the returns mentioned in **section 19-A*, †*Section 20-A*, section 21, section 22, or section 38;

(*d*) to produce, or cause to be produced, on or before the date mentioned in any notice under sub-section (*4*) of section 22, such accounts and documents as are referred to in the notice;

(*e*) to grant inspection or allow copies to be taken in accordance with provisions of section 39,

he shall, on conviction before a Magistrate, be punishable with fine which may extend to ten rupees for every day during which the default continues.

P. 87, 101. **52.** If a person makes a statement in a verification

False statement in declaration.

mentioned in **section 19-A or* †*section 20-A or* section 22, ‡*or sub-section (2) of section 26-A*, or sub-section (*3*) of section 30 or sub-section (*2*) of section 32 ‡*or sub-section* (*2*) *of section 33-A* †*or sub-section* (*3*) *of section 50-A* which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be deemed to have committed the offence described in section 177 of the Indian Penal Code. XLV of 1860.

P. 87, 128. **53.** (*1*) A person shall not be proceeded against for

Prosecution to be at instance of Assistant Commissioner.

an offence under section 51 or section 52 except at the instance of the Assistant Commissioner.

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* Inserted by the Indian Income-tax (Amendment) Act, 1926 (XXIV of 1926).

† Inserted by the Indian Income-tax (Second Amendment) Act, 1933 (XVIII of 1933).

‡ Inserted by the Indian Income-tax (Amendment) Act, 1930 (XXI of 1930).

(2) The Assistant Commissioner may stay any such proceeding or compound any such offence

Disclosure of information by a public servant

54. (1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of this Act, or in any evidence given, or affidavit or deposition made, in the course of any proceedings under this Act other than proceedings under this Chapter, or in any record of any assessment proceeding, or any proceeding, relating to the recovery of a demand, prepared for the purposes of this Act shall be treated as confidential and notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall, save as provided in this Act, be entitled to require any public servant to produce before it any such return, accounts, documents or record or any part of any such record, or to give evidence before it in respect thereof P. 9, 129.

(2) If a public servant discloses any particulars contained in any such statement return accounts documents, evidence, affidavit deposition or record he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine

Provided that nothing in this section shall apply to the disclosure—

(a) of any such particulars for the purposes of a prosecution under * the Indian Penal Code in respect of any such statement return, accounts, documents evidence, affidavit or deposition, or for the purposes of a prosecution under this Act, or

(b) of any such particulars to any person acting in the execution of this Act where it is necessary to disclose the same to him for the purposes of this Act or

(c) of any such particulars occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demand, or

†(cc) *of any such particulars occasioned by the lawful exercise by a public servant of his*

*Amended by the Indian Income tax (Second Amendment) Act 1930 (XXII of 1930)

†Inserted by the Indian Income tax (Second Amendment) Act 1933 (XVIII of 1933)

powers under the Indian Stamp Act, 1899, to impound an insufficiently stamped document, or

(*d*) of such facts to an authorised officer of the United Kingdom, as may be necessary to enable relief to be given under section 27 of the Finance Act, 1920, or a refund to be given under section 49 of this Act: 10 & 1 5 c. 18

*Provided. further, that nothing in this section shall apply to the production by a public servant before a Court of any document, declaration or affidavit filed, or the record of any statement or deposition made in a proceeding under section 26-A, *or to the giving of evidence by a public servant in respect thereof.*

Provided, further, that no prosecution shall be instituted under this section except with the previous sanction of the Commissioner.

CHAPTER IX.

SUPER-TAX.

P. 11, 12, 130.

Charge of super-tax.

55. In addition to the income-tax charged for any year, there shall be charged, levied and paid for that year in respect of the total income of the previous year of any †*individual, Hindu undivided family, company, unregistered firm or other association of individuals, not being a registered firm*, ‡*an* additional duty of income-tax (in this Act referred to as super-tax) at the rate or rates laid down for that year by Act of the §*Central* Legislature.

P. 71, 130.

*Provided that, where the profits and gains of an un*registered firm have been assessed to super-tax, super-tax shall not be payable by an individual having a share in the firm in respect of the amount of such profits and gains which is proportionate to his share.

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*Inserted by the Indian Income-tax (Amendment) Act, 1930 (XXI of 1930).

†Amended by the Indian Income-tax (Amendment) Act, 1924 (XI of 1924).

‡NOTE.—See note to Section 3.

§ Government of India (Adaptation of Indian Laws) Order, 1937.

56. Subject to the provisions of this Chapter the total income of any *individual, Hindu undivided family, company, unregistered firm or other association of individuals, shall, for the purposes of super tax be the total income as assessed for the purposes of income tax, and where an assessment of total income has become final and conclusive for the purposes of income tax for any year the assessment shall also be final and conclusive for the purposes of super tax for the same year P. 11, 130.

Total income for purposes of super tax

†* * * * * * *

57. (1) In the case of ‡any person residing out of British India who is a member of a registered firm, and whose share of the profits from such firm is liable to super tax the remaining members of such firm who are resident in British India shall be jointly and severally liable to pay the super tax due from the non resident member in respect of such share P. 131.

Non resident partners and shareholders

(2) Where any person pays any tax under the provisions of this section on account of §another person who is residing out of British India credit shall be given therefor in determining the amount of the tax to be payable by any agent of such non resident §person under the provisions of sections 42 and 43

58. (1) All the provisions of this Act ¶relating to the charge, assessment, collection and recovery of income tax except those contained in section 3, the proviso to sub section (1) of section 7, the ¶second and third provisos to section 8, sub section (2) of section 14 and sections 15, 17 19, 20, 21, 48, ¶58-F and sub sections (2) and (3) of section 58 G shall apply, so far as may be, to the charge assessment, collection and recovery of super tax P. 116, 130.

Application of Act to super tax

|| * * * *

* Amended by the Indian Income tax (Amendment) Act, 1924 (XI of 1924)

† Inserted by the Indian Income tax (Amendment) Act 1925 (V of 1925) and repealed by the Indian Income tax (Amendment) Act 1928 (III of 1928)

‡ Amended by the Indian Income tax (Amendment) Act 1926 (XXIV of 1926)

§ Inserted by the Indian Income tax (Amendment) Act 1926 (XXIV of 1926)

¶ Inserted by the Indian Income tax (Second Amendment) Act 1933 (XVIII of 1933)

|| Repealed by the Indian Income tax (Second Amendment) Act 1933 (XVIII of 1933)

(2) Save as provided in *sub-sections (3-A), (3-B), (3-C),† and (3-D) of section 18, section 57 *and section 58-H, super-tax shall be payable by the assessee direct.

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†CHAPTER IX-A.

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF PROVIDENT FUNDS.

P. 24. 58-A. In this Chapter, unless there is anything repugnant in the subject or context,—

Definitions.

(a) a "recognised provident fund" means a provident fund which has been and continues to be recognised by the Commissioner, in accordance with the provisions of this Chapter;

(b) an "employer" means—

(i) a Hindu undivided family, company, firm or other association of individuals or persons, or

(ii) an individual engaged in a business, profession or vocation whereof the profits and gains are assessable to income-tax under section 10 or section 11, maintaining a provident fund for the benefit of his or its employees;

(c) an "employee" means an employee participating in a provident fund, but does not include a personal or domestic servant;

(d) a "contribution" means any sum credited by or on behalf of any employee out of his salary, or by an employer out of his own monies, to the individual account of an employee, but does not include any sum credited as interest;

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*Inserted by the Indian Income-tax (Second Amendment) Act, 1933 (XVIII of 1933).

†Inserted by the Indian Income-tax (Provident Funds Relief) Act, 1929 (XII of 1929).

(*e*) the "balance to the credit" of an employee means the total amount to the credit of his individual account in a provident fund at any time,

(*f*) the "annual accretion" to the balance to the credit of an employee means the increase to such balance in any year, arising from contributions and interest,

(*g*) the "accumulated balance due" to an employee means the balance to his credit, or such portion thereof as may be claimable by him under the regulations of the fund, on the day he ceases to be an employee of the employer maintaining the fund, and

(*h*) the "regulations of a fund" means the special body of regulations governing the constitution and administration of a particular provident fund

The according and withdrawal of recognition

58-B. (*1*) The Commissioner of Income tax may accord recognition to any provident fund which, in his opinion, satisfies the conditions prescribed in section 58 C and the rules made thereunder, and may, at any time, withdraw such recognition if, in his opinion the provident fund contravenes any of those conditions **P. 25.**

(*2*) The **Central Government* may, at its discretion, direct the Commissioner of Income tax to refuse to accord recognition to any provident fund, or may, at any time, withdraw recognition from any recognised provident fund

(*3*) An order according recognition shall take effect on such date as the Commissioner may fix in accordance with any rules the Central Board of Revenue may make in this behalf, such date not being later than the last day of the financial year in which the order is made

(*4*) An order withdrawing recognition shall take effect from the day on which it is made

(*5*) An employer objecting to an order of the Commissioner refusing to recognise a provident fund may appeal, within sixty days of such order, to the Central Board of Revenue

* Government of India (Adaptation of Indian Laws) Order 1937

The appeal shall be in the form and shall be verified in the manner prescribed by the Central Board of Revenue.

P. 26, 27. **58-C.** (*1*) In order that a provident fund may receive and retain recognition, it shall satisfy the conditions set out below and any other conditions which the **Central Government* may, by rule, prescribe—

Conditions to be satisfied by a recognised provident fund.

(*a*) All employees shall be employed in India, or shall be employed by an employer whose principal place of business is in British India.

(*b*) The contributions of an employee in any year shall be a definite proportion of his salary for that year, and shall be deducted by the employer from the employee's salary in that proportion, at each periodical payment of such salary in that year, and credited to the employee's individual account in the fund.

(*c*) Subject to the provisions of section 58-D, the contributions of an employer to the individual account of an employee in any year shall not exceed the amount of the contributions of the employee in that year, and shall be credited to the employee's individual account at intervals not exceeding one year.

(*d*) The fund shall consist of contributions as above specified, of accumulations thereof, and of interest (simple and compound), credited in respect of such contributions and accumulations, and of securities purchased therewith *and of no other sums.*

(*e*) The fund shall be vested in two or more trustees† or in the Official Trustee, under a trust which shall not be revocable save with the consent of all the beneficiaries.

* Government of India (Adaptation of Indian Laws) Order, 1937.
† Inserted by the Indian Income-tax (Amendment) Act, 1931 (IV of 1931).

(f) The employer shall not be entitled to recover any sum whatsoever from the fund, save in cases where the employee is dismissed for miscon duct or voluntarily leaves his employment otherwise than on account of ill health or other unavoidable cause before the expiration of the term of service specified in this behalf in the regulations of the fund

In such cases the recoveries made by the employer shall be limited to the contributions made by him to the individual account of the employee and to interest (simple and compound) credited in respect of such contributions and accumula tions thereof in accordance with the regulations of the fund

(g) The accumulated balance due to an employee shall be payable on the day he ceases to be an employee of the employer maintaining the fund

(h) Save as provided in clause (g), or in accordance with such conditions and restrictions as the *Central Government may by rules, pre scribe, no portion of the balance to the credit of an employee shall be payable to him

(2) Where there is a repugnance between any regula tion of a recognised provident fund and any provision of this Chapter or of the rules made thereunder the regulation shall to the extent of the repugnance, be of no effect

The Commissioner may, at any time require that such repugnance shall be removed from the regulations of the fund

Power to relax re strictions of employ er s contributions in certain cases

58-D. Subject to any rules which the *Central Gov ernment may make in this behalf, the Commissioner may, in respect of any particular fund, relax the provisions of condition (c) of sub section (1) of section 58 C— **P. 26.**

(a) so as to permit the payment of larger contri butions by an employer to the individual

* Government of India (Adaptation of Indian Laws) Order 1937

58-H. The trustees of a recognised provident fund, or other person authorised by the regulations of the fund to make payment of accumulated balances due to employees, shall, at the time an accumulated balance due to an employee is paid, deduct therefrom any income-tax payable under sub-section (5) of section 58-G and any income-tax and super-tax payable on an employee's total income as determined under sub-section (4) of section 58-J, and sub-sections (2) to (8) of section 18 shall apply as if the sum to be deducted were income-tax payable under the head "Salaries".

Deduction at source of income-tax payable on accumulated balances due.

P. 30. **58-I.** (1) The accounts of a recognised provident fund shall be maintained by the trustees of the fund and shall be in such form and for such periods, and shall contain such particulars as the Central Board of Revenue may prescribe.

Accounts of recognised provident funds.

(2) The accounts shall be open to inspection at all reasonable times by Income-tax authorities, and the trustees shall furnish to the Income-tax Officer such abstracts thereof as the Central Board of Revenue may prescribe.

P. 30. **58-J.** (1) Where the recognition is accorded to a provident fund with existing balances, an account shall be made of the fund up to the day before the day on which the recognition takes effect, showing the balance to the credit of each employee on such day, and containing such further particulars as the Central Board of Revenue may prescribe.

Treatment of balances in newly recognised provident funds.

(2) The account shall also show in respect of the balance to the credit of each employee the amount thereof which is to be transferred to that employee's account in the recognised provident fund, and such amount (hereinafter called his transferred balance) shall be shown as the balance to his credit in the recognised provident fund on the date on which the recognition of the fund takes effect, and sub-sections (3) and (4) shall apply thereto.

Any portion of the balance to the credit of an employee in the existing fund which is not transferred to the recognised fund shall be excluded from the accounts

of the recognised fund and shall be liable to income tax and super tax in accordance with the provisions of this Act other than this Chapter

(3) Subject to such rules as the Central Board of Revenue may make in this behalf, the Income tax Officer shall make a calculation of the aggregate of all sums comprised in a transferred balance which would have been liable to income tax if this Chapter had been in force from the date of the institution of the fund without regard to any tax which may have been paid on any such sum, and such aggregate (if any) shall be deemed to be income received by the employee in the year in which the recognition of the fund takes effect and shall be included in the employee's total income for that year and for the purposes of assessment the remainder of the transferred balance shall be disregarded but no other exemption or relief, by way of refund or otherwise shall be granted in respect of any sum comprised in such transferred balance

Provided that, in cases of serious accounting difficulty, the Commissioner shall have power subject to the said rules, to make a summary calculation of such aggregate

(4) Notwithstanding anything contained in condition (h) of sub section (1) of section 58 C, an employee, in order to enable him to pay the amount of tax assessed on his total income as determined under sub section (3) shall be entitled to withdraw from the balance to his credit in the recognised provident fund a sum not exceeding the difference between such amount and the amount to which he would have been assessed if the transferred balance had not been included in his total income

(5) Nothing in this section shall affect the rights of the persons administering an unrecognised provident fund or dealing with it, or with the balance to the credit of any individual employee, before recognition is accorded, in any manner which may be lawful

Treatment of fund transferred by employer to trustee

58-K. (1) Where an employer who maintains a provident fund (whether recognised or not) for the benefit of his employees and has not transferred the fund or any portion of it, transfers such fund or portion to trustees in trust **P. 31.**

*(3) In cases coming under clause (a) of sub section (2), where the income, profits and gains liable to tax cannot be definitely ascertained, or can be ascertained only with an amount of trouble and expense to the assessee which, in the opinion of the Central Board of Revenue, is unreasonable, the rules made under that sub-section may—

(a) prescribe methods by which an estimate of such income, profits and gains may be made, and

(b) in cases coming under sub-clause (i) of clause (a) of sub-section (2), prescribe the proportion of the income which shall be deemed to be income, profits and gains liable to tax,

and an assessment based on such estimate or proportion shall be deemed to be duly made in accordance with the provisions of this Act.

P. 133. (4) The power to make rules conferred by this section shall, except on the first occasion of the exercise thereof, be subject to the condition of previous publication.

(5) Rules made under this section shall be published in the †*Official* Gazette, and shall thereupon have effect as if enacted in this Act.

P. 17, 18 & 47.

Power to make exemptions, etc.

60. (1) *The* †*Central Government* may, by notification in the Gazette of India, make an exemption, reduction in rate or other modification, in respect of income-tax in favour of any class of income, or in regard to the whole or any part of the income of any class of persons.

‡(2) Where, by reason of any portion of an assessee's salary being paid in arrears or in advance §*or by reason of his having received in any one financial year salary for more than twelve months,* his income is assessed at a rate higher than that at which it would otherwise have been assessed; the †*Central Government* may grant such relief as *it* may think fit.

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* Inserted by the Indian Income-tax (Amendment) Act, 1927 (XXVIII of 1927).

† Government of India (Adaptation of Indian Laws) Order, 1937.

‡ Inserted by the Indian Income-tax (Amendment) Act, 1930 (XXI of 1930).

§ Inserted by the Indian Income-tax (Second Amendment) Act, 1933 (XVIII of 1933).

61. Any assessee, who is entitled or required to attend before any income tax authority in connection with any proceedings, under this Act, may attend either in person or by any person authorised by him in writing in this behalf P. 90.

Appearance by authorised representative

62. A receipt shall be given for any money paid or recovered under this Act

Receipts to be given

63. (*1*) A notice or requisition under this Act may be served on the person therein named either by post or as if it were a summons issued by a Court under the Code of Civil Procedure, 1908 P. 137.

Service of notices

108

(*2*) Any such notice or requisition may, in the case of a firm or a Hindu undivided family, be addressed to any member of the firm or to the manager, or any adult male member of the family **and, in the case of any other association of individuals be addressed to the principal officer thereof*

64. (*1*) Where an assessee carries on business at any place, he shall be assessed by the Income tax Officer of the area in which that place is situate or, where the business is carried on in more places than one, by the Income tax Officer of the area in which his principal place of business is situate P. 138.

Place of assessment

(*2*) In all other cases an assessee shall be assessed by the Income tax Officer of the area in which he resides

(*3*) Where any question arises under this section as to the place of assessment, such question shall be determined by the Commissioner or, where the question is between places in more provinces than one, by the Commissioners concerned, or, if they are not in agreement by the Central Board of Revenue

Provided that, before any such question is determined the assessee shall have had an opportunity of representing his views

(*4*) Notwithstanding anything contained in this section, every Income tax Officer shall have all the powers conferred by or under this Act on an Income tax Officer in respect of any income, profits or gains accruing, or arising or received within the area for which he is appointed P. 35, 83.

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*Amended by the Indian Income tax (Amendment) Act 1924 (XI of 1924)

65. Every person deducting, retaining or paying any tax in pursuance of this Act in respect of income belonging to another person is hereby indemnified for the deduction, retention or payment thereof.

Indemnity.

66. (*1*) If, in the course of any assessment under this Act or any proceeding in connection therewith other than a proceeding under Chapter VIII, a question of law arises, the Commissioner may, either on his own motion or on reference from any Income-tax authority subordinate to him, draw up a statement of the case and refer it with his own opinion thereon to the High Court.

Statement of case by Commissioner to High Court.

(*2*) **Within sixty days of the date on which he is served with notice of an order under section 31 or section 32 †or of an order under section 33 enhancing an assessment or otherwise prejudicial to him ‡or of a decision by a Board of Referees under section 33-A*, the assessee in respect of whom the order ‡*or decision* was passed may, by application accompanied by a fee of one hundred rupees or such lesser sum as may be prescribed, require the Commissioner to refer to the High Court any question of law arising out of such order ‡*or decision*, and the Commissioner shall, within **sixty days* of the receipt of such application, draw up a statement of the case and refer it with his own opinion thereon to the High Court:

†*Provided that a reference shall lie from an order under section 33 only on a question of law arising out of that order itself, and not on a question of law arising out of a previous order under section 31 or section 32, revised by the order under section 33*:

Provided *further* that if in exercise of his power of *revision* §under section 33, the Commissioner decides the question †*or if the Commissioner rejects the application on the ground that it is time barred or otherwise*

*Amended by the Indian Income-tax (Second Amendment) Act, 1930 (XXII of 1930).

†Inserted by the Indian Income-tax (Second Amendment) Act, 1933 (XVIII of 1933).

‡Inserted by the Indian Income-tax (Amendment) Act, 1930 (XXI of 1930).

§Amended by the Indian Income-tax (Amendment) Act, 1928 (III of 1928).

incompetent, or if, in exercise of his powers under sub-section (3), the Commissioner refuses to state the case, the assessee may **within thirty days from the date on which he receives notice of the order passed by the Commissioner* withdraw his application, and if he does so, the fee paid shall be refunded

(*3*) If on any application being made under sub section (*2*), the Commissioner refuses to state the case on the ground that no question of law arises, the assessee may apply †*within six months from the date on which he is served with notice of the refusal* to the High Court, and the High Court, if it is not satisfied of the correctness of the Commissioner's decision, may require the Commissioner to state the case and to refer it, and, on receipt of any such requisition, the Commissioner shall state and refer the case accordingly

**(3A) If, on any application being made under sub-section (2), the Commissioner rejects it on the ground that it is time barred, the assessee may, within two months from the date on which he is served with notice of the order of the Commissioner, apply to the High Court and the High Court, if it is not satisfied of the correctness of the Commissioner's decision, may require the Commissioner to treat the application as made within the time allowed under sub-section (2)*

(*4*) If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, the Court may refer the case back to the Commissioner by whom it was stated to make such additions thereto or alterations therein as the Court may direct in that behalf

(*5*) The High Court upon the hearing of any such case shall decide the questions of law raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and shall send to the Commissioner by whom the case was stated a copy of such judgment under the seal of the Court and the signature

*Inserted by the Indian Income tax (Second Amendment) Act, 1933 (XVIII of 1933)

Amended by the Indian Income tax (Amendment) Act 1924 (XI of 1924)

of the registrar, and the Commissioner shall dispose of the case accordingly, or, if the case arose on a reference from any Income-tax authority subordinate to him, shall forward a copy of such judgment to such authority who shall dispose of the case conformably to such judgment.

(6) Where a reference is made to the High Court on the application of an assessee, the costs shall be in the discretion of the Court.

P. 115. (7) Notwithstanding that a, reference has been made under this section to the High Court, income-tax shall be payable in accordance with the assessment made in the case:

Provided that, if the amount of an assessment is reduced as a result of such reference, the amount overpaid shall be refunded with such interest as the Commissioner may allow.

*(7A) *Section 5 of the Indian Limitation Act, 1908,* IX of *shall apply to an application to the High Court by an assessee under sub-section (3) or sub-section (3A).*

†(8) For the purposes of this section "the High Court" means—

(a) in relation to the North-West Frontier Province and British Baluchistan, the High Court of Judicature at Lahore;

(b) in relation to the province of Ajmer-Merwara, the High Court of Judicature at Allahabad; and

(c) in relation to the province of Coorg, the High Court of Judicature at Madras.

P. 139, 140. **†66-A.** (1) When any case has been referred to the High Court under section 66, it shall be heard by a Bench of not less than two Judges of the High Court, and in respect of such case the provisions of section 98 of the Code of Civil Procedure, 1908 shall, V of 1

Reference to be heard by Benches of High Courts, and appeal to lie in certain cases to Privy Council.

*Inserted by the Indian Income-tax (Second Amendment) Act, 1933 (XVIII of 1933).

†Inserted by the Indian Income-tax (Amendment) Act, 1926 (XXIV of 1926).

so far as may be, apply notwithstanding anything contained in the Letters Patent of any High Court established by Letters Patent or in any other law for the time being in force

(2) An appeal shall lie to His Majesty in Council from any judgment of the High Court delivered on a reference made under section 66 in any case which the High Court certifies to be a fit one for appeal to His Majesty in Council

(3) The provisions of the Code of Civil Procedure,
08 1908, relating to appeals to His Majesty in Council shall, so far as may be, apply in the case of appeals under this section in like manner as they apply in the case of appeals from decrees of a High Court

Provided that nothing in this sub section shall be deemed to affect the provisions of sub section (5) or sub-section (7) of section 66

Provided, further, that the High Court may, on petition made for the execution of the order of His Majesty in Council in respect of any costs awarded thereby, transmit the order for execution to any Court subordinate to the High Court

(4) Where the judgment of the High Court is varied or reversed in appeal under this section, effect shall be given to the order of His Majesty in Council in the manner provided in sub sections (5) and (7) of section 66 in the case of a judgment of the High Court

(5) Nothing in this section shall be deemed—

(a) *to bar the full and unqualified exercise of* His Majesty's pleasure in receiving or rejecting appeals to His Majesty in Council, or otherwise howsoever, or

(b) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to His Majesty in Council, or their conduct before the said Judicial Committee

Bar of suits in Civil Court

67. No *suit* shall be brought in any Civil Court to set aside or modify any assessment made under this Act, and no prosecution, suit

or other proceeding shall lie against any officer *of the Crown for anything in good faith done or intended to be done under this Act.

P. 140. †67-A. In computing the period of limitation prescribed for an appeal under this Act or for an application under section 66, the day on which the order complained of was made, and the time requisite for obtaining a copy of such order, shall be excluded.

Computation of periods of limitations.

68. [*Repealed.*]

Extract from the Indian Finance Act, 1937.

* * * * * *

1. (*1*) This Act may be called the Indian Finance Act, 1937.

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7. (*1*) Income-tax for the year beginning on the 1st day of April, 1937, shall be charged at rates applicable to the total income of each assessee the same, and increased in each case by the same fraction of the amount of the rate, as for the year beginning on the 1st day of April, 1936.

Income-tax and super-tax.

(*2*) The rates of super-tax for the year beginning on the 1st day of April, 1937, shall, for the purposes of section 55 of the Indian Income-tax Act, 1922, be the same rates, increased in each case by the same fraction of the amount of the rate, as for the year beginning on the 1st day of April, 1936. XI of 19[illegible]

(*3*) For the purposes of sub-section (*1*) "total income" means total income as determined in accordance with the provisions of the Indian Income-tax Act, 1922. IX of 19[illegible]

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* Government of India (Adaptation of Indian Laws) Order 1937.

†Inserted by the Indian Income-tax (Second Amendment) Act, 1930 (XXII of 1930).

‡Repealed by the Repealing Act, 1927 (XII of 1927).

SCHEDULE II.

(Appended to the Indian Finance Act, 1936)

PART I

Rates of Income-tax

A In the case of every individual, Hindu undivided family, unregistered firm and other association of individuals not being a registered firm or a company—

	Rate
(1) When the total income is Rs 2,000 or upwards, but is less than Rs 5,000	Six pies in the rupee
(2) When the total income is Rs 5 000 or upwards, but is less than Rs 10,000	Nine pies in the rupee
(3) When the total income is Rs 10,000 or upwards, but is less than Rs 15 000	One anna in the rupee
(4) When the total income is Rs 15,000 or upwards, but is less than Rs 20,000	One anna and four pies in the rupee
A (5) When the total income is Rs 20,000 or upwards, but is less than Rs 30,000	One anna and seven pies in the rupee
(6) When the total income is Rs 30 000 or upwards, but is less than Rs 40,000	One anna and eleven pies in the rupee
(7) When the total income is Rs 40,000 or upwards, but is less than Rs 1,00,000	Two annas and one pie in the rupee
(8) When the total income is Rs 1,00,000 or upwards	Two annas and two pies in the rupee

B In the case of every company and registered firm, whatever its total income — Two annas and two pies in the rupee

PART II

Rates of Super-tax

B In respect of the excess over thirty thousand rupees of total income—

	Rate
(1) in the case of every company—	
(a) in respect of the first twenty thousand rupees of such excess	*Nil*
(b) for every rupee of the remainder of such excess	One anna in the rupee

	Rate.
(2) (*a*) in the case of every Hindu undivided family—	
(*i*) in respect of the first forty-five thousand rupees of such excess	*Nil.*
(*ii*) for every rupee of the next twenty-five thousand rupees of such excess	One anna and three pies in the rupee.
(*b*) in the case of every individual, unregistered firm and other association of individuals not being a registered firm or a company—	
(*i*) for every rupee of the first twenty thousand rupees of such excess	Nine pies in the rupee.
(*ii*) for every rupee of the next fifty thousand rupees of such excess	One anna and three pies in the rupee.
(*c*) in the case of every individual, Hindu undivided family, unregistered firm and other association of individuals not being a registered firm or a company—	
(*i*) for every rupee of the next fifty thousand rupees of such excess	One anna and nine pies in the rupee.
(*ii*) for every rupee of the next fifty thousand rupees of such excess	Two annas and three pies in the rupee.
(*iii*) for every rupee of the next fifty thousand rupees of such excess	Two annas and nine pies in the rupee.
(*iv*) for every rupee of the next fifty thousand rupees of such excess	Three annas and three pies in the rupee.
(*v*) for every rupee of the next fifty thousand rupees of such excess	Three annas and nine pies in the rupee.
(*vi*) for every rupee of the next fifty thousand rupees of such excess	Four annas and three pies in the rupee.
(*vii*) for every rupee of the next fifty thousand rupees of such excess	Four annas and nine pies in the rupee.
(*viii*) for every rupee of the next fifty thousand rupees of such excess	Five annas and three pies in the rupee.
(*ix*) for every rupee of the next fifty thousand rupees of such excess	Five annas and nine pies in the rupee.
(*x*) for every rupee of the remainder of such excess .	Six annas and three pies in the rupee.

ACT III OF 1926

AN ACT TO DETERMINE THE LIABILITY OF CERTAIN GOVERNMENTS TO TAXATION IN BRITISH INDIA IN RESPECT OF TRADING OPERATIONS

Whereas it is expedient to determine the liability to taxation for the time being in force in British India of the Government of any part of His Majesty's dominions, exclusive of British India, in respect of any trade or business carried on by or on behalf of such Government, It is hereby enacted as follows —

Short title and commencement

1. (*1*) This Act may be called the Government Trading Taxation Act, 1926

(*2*) It shall come into force on such date* as the Governor General in Council may, by notification in the Gazette of India, appoint

Liability of certain Governments to taxation in respect of trading operations

2. (*1*) Where a trade or business of any kind is carried on by or on behalf of the Government of any part of His Majesty's Dominions, exclusive of British India, that Government shall, in respect of the trade or business and of all operations connected therewith, all property occupied in British India and all goods owned in British India for the purposes thereof, and all income arising in connection therewith, be liable

922

(*a*) to taxation under the Indian Income tax Act 1922, in the same manner and to the same extent as in the like case a company would be liable,

(*b*) to all other taxation for the time being in force in British India in the same manner as in the like case any other person would be liable

(*2*) For the purposes of the levy and collection of income tax under the Indian Income tax Act, 1922, in accordance with the provisions of sub section (*1*), any

*The Act came into force with effect from the 1st April 1926

	Rate.
(2) (*a*) in the case of every Hindu undivided family—	
(*i*) in respect of the first forty-five thousand rupees of such excess	*Nil.*
(*ii*) for every rupee of the next twenty-five thousand rupees of such excess	One anna and three pies in the rupee.
(*b*) in the case of every individual, unregistered firm and other association of individuals not being a registered firm or a company—	
(*i*) for every rupee of the first twenty thousand rupees of such excess	Nine pies in the rupee.
(*ii*) for every rupee of the next fifty thousand rupees of such excess	One anna and three pies in the rupee.
(*c*) in the case of every individual, Hindu undivided family, unregistered firm and other association of individuals not being a registered firm or a company—	
(*i*) for every rupee of the next fifty thousand rupees of such excess	One anna and nine pies in the rupee.
(*ii*) for every rupee of the next fifty thousand rupees of such excess	Two annas and three pies in the rupee.
(*iii*) for every rupee of the next fifty thousand rupees of such excess	Two annas and nine pies in the rupee.
(*iv*) for every rupee of the next fifty thousand rupees of such excess	Three annas and three pies in the rupee.
(*v*) for every rupee of the next fifty thousand rupees of such excess	Three annas and nine pies in the rupee.
(*vi*) for every rupee of the next fifty thousand rupees of such excess	Four annas and three pies in the rupee.
(*vii*) for every rupee of the next fifty thousand rupees of such excess	Four annas and nine pies in the rupee.
(*viii*) for every rupee of the next fifty thousand rupees of such excess	Five annas and three pies in the rupee.
(*ix*) for every rupee of the next fifty thousand rupees of such excess	Five annas and nine pies in the rupee.
(*x*) for every rupee of the remainder of such excess .	Six annas and three pies in the rupee.

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Liability of certain Governments to taxation in respect of trading operations

2. (*1*) Where a trade or business of any kind is carried on by or on behalf of the Government of any part of His Majesty's Dominions, exclusive of British India, that Government shall, in respect of the trade or business and of all operations connected therewith, all property occupied in British India and all goods owned in British India for the purposes thereof, and all income arising in connection therewith, be liable

(*a*) to taxation under the Indian Income tax Act,
922 1922, in the same manner and to the same extent as in the like case a company would be liable,

(*b*) to all other taxation for the time being in force in British India in the same manner as in the like case any other person would be liable

(*2*) For the purposes of the levy and collection of income tax under the Indian Income-tax Act, 1922, in accordance with the provisions of sub section (*1*), any

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*The Act came into force with effect from the 1st April, 1926

Government to which that sub-section applies shall be deemed to be a company within the meaning of that Act, and the provisions of that Act shall apply accordingly.

(3) In this section the expression "His Majesty's Dominions" includes any territory which is under His Majesty's protection or in respect of which a mandate is being exercised by the Government of any part of His Majesty's Dominions.

THE INDIA AND BURMA (INCOME-TAX RELIEF) ORDER, 1936.

PART I.

INTRODUCTORY AND GENERAL.

1. This Order may be cited as "The India and Burma (Income Tax Relief) Order, 1936".

2. The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

3. Any reference in this Order to, or to any provisions of, the Indian Income-tax Act, 1922, shall be construed as a reference to that Act or those provisions as for the time being in force in India, as for the time being in force in Burma, or as for the time being in force both in India and in Burma, as the context and the circumstances may require, or, if that Act or those provisions have been repealed and re-enacted, either with or without modifications, to the re-enacting Act or provisions as in force as aforesaid.

4. In this Order, "income tax" or "tax", in relation to India or Burma, means income-tax payable in accordance with the Indian Income-tax Act, 1922, and includes super-tax so payable; and other expressions have, except where the context otherwise requires, the same meanings as in the Indian Income-tax Act, 1922.

5. References in this Order to the rate of tax shall—

(a) in relation to India or Burma, be construed as references to a rate determined by dividing the amount of income-tax paid in India or Burma, as the case may be, for the year in question

(before deduction of any relief granted under section forty-nine of the Indian Income tax Act 1922, or under this Order) by the amount of the income on which tax was charged,

(*b*) in relation to the United Kingdom, mean the appropriate rate of United Kingdom income-tax for the year in question as defined for the purposes of section twenty seven of the Finance Act, 1920

6. Any reference in this Order to the lower of two rates shall, where the rates are equal, be construed as a reference to either of those rates, and any reference in this Order to the two lowest of three rates shall, where the three rates are equal, be construed as a reference to any two of them, and where two of the three rates are equal and the third is less be construed as a reference to the lowest rate and one of the equal rates

7. This Order shall have effect with respect to the financial year beginning on the date of the commencement of Part III of the India Act and every subsequent financial year

Provided that if, at any time after the expiration of three years from the commencement of Part III of the India Act, the Governor General of India gives to the Governor of Burma, or the Governor of Burma gives to the Governor General of India, notice of his desire that this Order shall cease to operate, the Order shall not have effect with respect to any financial year subsequent to the financial year next following that during which the notice is given

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PART II

Relief in India

1. If any person who has paid Indian income tax for any year on any part of his income proves to the satisfaction of the Income tax Officer that he has paid for that year Burman income tax, or Burman income tax and

United Kingdom income-tax, in respect of that part of his income, he shall be entitled to a refund of Indian tax calculated on that part of his income at the appropriate rate of relief.

In this paragraph "appropriate rate of relief" means—

(*a*) in relation to income taxed in India and Burma and not in the United Kingdom, a rate bearing to the Indian rate of tax or the Burman rate of tax, whichever is the lower, the same proportion as the Indian rate of tax bears to the sum of the Indian rate of tax and the Burman rate of tax;

(*b*) in relation to income taxed in India, Burma and the United Kingdom, a rate bearing to the difference between the total rate at which he was entitled to, and obtained, relief in the United Kingdom under section twenty-seven of the Finance Act, 1920, in respect of that income, and the sum of the two lowest of the three rates of tax the same proportion as the Indian rate of tax bears to the sum of the Indian rate of tax and the Burman rate of tax.

2. No refund of tax shall be payable in India under section forty-nine of the Indian Income-tax Act, 1922, in respect of any income which is taxed under that Act in Burma, and if any such refund is made it shall be repaid.

3. Any sums repayable under the last foregoing paragraph and any sums overpaid by way of refund under this Part of this Order shall be recoverable as if they were arrears of income-tax.

4. No income which an assessee proves to the satisfaction of the Income-tax Officer to have been charged in his hands to income-tax under the Indian Income-tax Act, 1922, for any year preceding the commencement of Part III of the India Act shall be included in India in the assessment of his income for any subsequent year.

5. In the provisions of the Indian Income tax Act, 1922 (other than the provisions of section forty nine thereof)—

(*a*) any reference to that Act or to section forty-nine thereof shall be construed as including a reference to this Part of this Order,

(*b*) any reference to section twenty seven of the Finance Act, 1920, shall be construed as including a reference to Part III of this Order,

(*c*) any reference to the United Kingdom in relation to relief under the said section twenty seven, or in relation to refunds under the said section forty nine, shall be construed as including a reference to Burma in relation to refunds under Part III of this Order or this Part of this Order, as the case may require

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PART III

Relief in Burma

1 If any person who has paid Burman income tax for any year on any part of his income proves to the satisfaction of the Income tax Officer that he has paid for that year Indian income tax or Indian income tax and United Kingdom income tax, in respect of that part of his income he shall be entitled to a refund of Burman tax calculated on that part of his income at the appropriate rate of relief

In this paragraph "appropriate rate of relief" means—

(*a*) in relation to income taxed in Burma and India and not in the United Kingdom a rate bearing to the Burman rate of tax or the Indian rate of tax, whichever is the lower, the same proportion as the Burman rate of tax bears to the sum of the Burman rate of tax and the Indian rate of tax,

(*b*) in relation to income taxed in Burma, India and the United Kingdom a rate bearing to the difference between the total rate at which he

was entitled to, and obtained, relief in the United Kingdom under section twenty-seven of the Finance Act, 1920, in respect of that income, and the sum of the two lowest of the three rates of tax the same proportion as the Burman rate of tax bears to the sum of the Burman rate of tax and the Indian rate of tax.

2. No refund of tax shall be payable in Burma under section forty-nine of the Indian Income-tax Act, 1922, in respect of any income which is taxed under that Act in India. and if any such refund is made it shall be repaid.

3. Any sums repayable under the last foregoing paragraph and any sums overpaid by way of refund under this Part of this Order shall be recoverable as if they were arrears of income-tax.

4. No income which an assessee proves to the satisfaction of the Income-tax Officer to have been charged in his hands to income-tax under the Indian Income-tax Act, 1922, for any year preceding the commencement of the Burma Act, shall be included in Burma in the assessment of his income for any subsequent year.

5. In the provisions of the Indian Income-tax Act, 1922 (other than the provisions of section forty-nine thereof)—

(*a*) any reference to that Act or to section forty-nine thereof shall be construed as including a reference to this Part of this Order;

(*b*) any reference to section twenty-seven of the Finance Act, 1920, shall be construed as including a reference to Part II of this Order;

(*c*) any reference to the United Kingdom, in relation to relief under the said section twenty-seven or in relation to a refund under the said section forty-nine, shall be construed as including a reference to India in relation to refunds under Part II of this Order or this Part of this Order, as the case may require.

PART II.
RULES.

BOARD OF INLAND REVENUE

Notification No 3 I T, dated the 1st April 1922 as subsequently amended

In exercise of the powers conferred by section 59 of the Indian Income tax Act, 1922 (XI of 1922), the Board of Inland Revenue has made the following rules, namely —

1 These rules may be called the Indian Income tax Rules, 1922

2 Any firm constituted under an instrument of partnership specifying the individual shares of the partners may, for the purposes of clause (14) of section 2 of the Indian Income tax Act, 1922 (hereinafter in these rules referred to as the Act), register with the Income tax Officer the particulars contained in the said instrument on application in this behalf made by the partners or by any of them **P. 10.**

Such application shall be made—

(*a*) before the income of the firm is assessed for any year under section 23, or

(*b*) if no part of the income of the firm has been assessed for any year under section 23, before the income of the firm is assessed under section 34, or

(*c*) with the permission of the Assistant Commissioner hearing an appeal under section 30, before the assessment is confirmed, reduced, enhanced or annulled, or, if the Assistant Commissioner sets aside the assessment and directs the Income tax Officer to make a fresh assessment, before such fresh assessment is made

3 The application referred to in rule 2 shall be made in the form annexed to this rule and shall be accompanied by the original instrument of partnership under which the firm is constituted together with a copy thereof, provided that if the Income tax Officer is satisfied that for some sufficient reason the original instrument cannot conveniently be produced, he may accept a copy of it certified in writing by one of the partners to be a correct copy, and in such a case the application shall be accompanied by a duplicate copy

FORM I.

Form of application for registration of a firm under section 2 (14) of the Indian Income-tax Act, 1922.

To

THE INCOME-TAX OFFICER,

Dated 19 .

I/we beg to apply for the registration of my/our firm under section 2 (*14*) of the Indian Income-tax Act, 1922.

2. The original/A certified copy of the instrument of partnership under which the firm is constituted specifying the individual shares of the partners together with a copy/duplicate copy is enclosed. The prescribed particulars are given below.

3. I/we do hereby certify that the profits of the current year will be actually divided or credited in accordance with the shares shown in this partnership deed.

Signature

Address

Name and Address of the firm.	Name of the partners in the firm with the share of each in the business.	Date on which instrument of partnership was executed.	Date, if any, on which the instrument of partnership was last registered in the Income-tax Officer's office.	Remarks.

I/we do hereby certify that the information given above is correct.

Signature(s)

4 (*1*) On the production of the original instrument of partnership or on the acceptance by the Income-tax Officer of a certified copy thereof, the Income-tax Officer shall enter in writing at the foot of the instrument or copy, as the case may be, the following certificate, namely —

"This instrument of partnership (or this certified copy of an instrument of partnership) has this day been registered with me, the Income-tax Officer, for in the province of under clause (*14*) of section 2 of the Indian Income tax Act, 1922 This certificate of registration has effect from the day of April 19 up to the 31st day of March 19 "

(*2*) The certificate shall be signed and dated by the Income tax Officer who shall thereupon return to the applicant the instrument of partnership or the certified copy thereof, as the case may be, and shall retain the copy or duplicate copy thereof

5 The certificate of registration granted under rule 4 shall have effect from the date of registration

6 A certificate of registration granted under rule 4 shall have effect up to the end of the financial year in which it is granted but shall be renewed by the Income tax Officer from year to year on application made to him in that behalf and accompanied by a certificate signed by one of the partners of the firm that the constitution of the firm as specified in the instrument of partnership remains unaltered Such application shall be made within the time and subject to the conditions, if any, which are specified in clause (*a*), clause (*b*), or clause (*c*), as the case may be, of rule 2

7 Under section 9 (*1*) (*vi*) of the Act, the sum to be allowed in respect of collection charges shall not exceed 6 per cent of the annual value of the property **P. 46.**

P. 59. 8. An allowance under section 10 (2) (vi) of the Act in respect of depreciation of buildings, machinery, plant or furniture shall be made in accordance with the following statement :—

Class of buildings, machinery, plant or furniture.	Rate.	Remarks.
	Percentage on prime cost.	
1. Buildings*—		
(1) First class substantial buildings of selected materials.	2½	*Double these rates may be allowed for buildings used in industries which cause special deterioration, such as chemical works, soap and candle works, paper mills, and tanneries.
(2) Buildings of less substantial construction	5	
(3) Purely temporary erections such as wooden structures.	10	
2. Machinery, Plant or Furniture—		
General rate	5	The special rates for electrical machinery specified hereinafter may be adopted, at the option of the assessee for that portion of the machinery.
Special rates are sanctioned as under in the following cases :—		
A. Plant and machinery used in—		
(1) Flour Mills, Rice Mills, Bone Mills, Sugar Works, Distilleries, Ice Factories, Aerating Gas Factories, Match Factories	6¼	
(2) Paper Mills, Strawboard, Mills, Ship Building and Engineering Works, Iron and Brass Foundries, Aluminium Factories, Electrical Engineering Works, Motor Car Repairing Works, Galvanizing Works, Patent Stone Works, Oil Extraction Factories, Chemical Works, Soap and Candle Works, Lime Works, Saw Mills, Dyeing and Bleaching Works, Cement Works using rotary kilns, Rod Mills	7½	
(3) Brick manufacture, tile-making industry, the manufacture of (a) vegetable ghee, (b) optical instruments, (c) coke and (d) concrete pipes, glass factories, Telephone Companies, Mines and Quarries, Wire and Nail making Mills . . .	10	
B. Furniture and Plant in hotels and boarding houses	7½	

Class of buildings, machinery, plant or furniture	Rate	Remarks
2. Machinery, Plant or Furniture—*contd*	Percentage on prime cost.	
C. (1) Comptometers, Typewriters, Tube-well boring plant, concrete pile driving machines	10	
(2) Sewing and knitting machines employed in hosiery factories	10	
(3) Sewing machines for canvas or leather	12½	
(4) Motor cars used solely for the purpose of business	15	
(5) Indigenous sugarcane crushers (Kohlus or Belans)	15	
(6) Moulds used in the manufacture of concrete pipes	16	
(7) Motor taxis, motor lorries and motor buses	20	
(8) Ropeway ropes and trestle sheaves and connected parts	25	
D. Ropeway structures—		
(1) Trestle and station steel work	5	
(2) Driving and tension gearing	7½	
(3) Carriers	10	
E. Salt Works—		
(1) Machinery, plant, locomotives, wagons and rolling stock	10	
(2) Tugs, barges, motor launch and floating plant	7½	
(3) General plant and machinery used in engineering shops	7½	
(4) Reservoirs, condensers, salt pans delivery channels and piers, if constructed of masonry, concrete, cement, asphalt or similar materials	5	
NOTE—Repairs to earth works of the same kind will be allowed as revenue expenditure.		
(5) Piers, quays and jetties constructed entirely or mainly of steel	5	
(6) Piers, quays and jetties constructed entirely or mainly of wood	10	
(7) Pipe lines for conveying brine if constructed of masonry, concrete, cement, asphalt or similar materials	10	
3. Electrical Machinery—		
(a) Batteries	15	
(b) Other electrical machinery, including electrical generators, motors (other than tramway motors), switchgear and instruments transformers and other stationery plant and wiring and fittings of electric light and fan installations	7½	
Underground cables and wires	6	
Overhead cables and wires	2½	
X-Ray and Electro therapeutic apparatus and accessories thereto	20	

Class of buildings, machinery, plant or furniture.	Rate.	Remarks.
	Percentage on prime cost.	
3. Electrical Machinery—*contd.*		
(*f*) Silk Manufacturing—Weaving Machinery worked by electric motors including winding machines, twisting frames, doubling machine, pirn winding machine, warping machine, looms, stentering machine and hydro-extractor .	7½	
(*g*) Air-conditioning machinery . . .	7½	
(*h*) Machinery used in the production of cinematograph films, namely :—		
Recording equipment, Reproducing equipment, Developing machines, Printing machines, Editing machines, Synchronisers and Studio lights . .	15	
4. Hydro-Electric concerns—		
Hydraulic works, pipe lines, sluices, and all other items not otherwise provided for in this statement.	2½	
5. Electric Tramways—Permanent Way—		
(*a*) Not exceeding 50,000 car miles per mile of track per annum . . .	6¼	
(*b*) Exceeding 50,000 and not exceeding 75,000 car miles per mile of track per annum	7½	
(c) Exceeding 75,000 and not exceeding 1,25,000 car miles per mile of track per annum.	8½	
Cars—car tracks, car bodies, electrical equipment and motors	7	
General plant, machinery and tools . .	5	
6. Mineral Oil concerns—		
A. Refineries—		
(1) Boilers	10	
(2) Prime movers	5	
(3) Process plant	10	
B. Field operations—		
(1) Boilers	10	
(2) Prime movers	5	
(3) Process plant	7½	
Except for the following items—		
(1) Below ground	100	
(2) Above ground—		
(*a*) Portable boilers, drilling tools, wellhead tank, rigs, etc.	25	
(*b*) Storage tanks	10	
(c) Pipe lines—		
(*i*) Fixed boilers	10	
(*ii*) Prime movers	7½	
(*iii*) Pipe line	10	

Class of buildings machinery plant or furniture	Rate	Remarks
	Percentage on prime cost	
7 Ships—		
(1) Ocean—		
(a) Steam	5	
(b) Sail or tug	4	
(2) Inland—		
(a) Steamers (over 120 ft in length)	5	
(b) Steamers including cargo launches (120 ft in length and under)	6	
(c) Tug boats	7½	
(d) Iron or steel flats for cargo, etc	5	
(e) Wooden cargo boats up to 50 tons capacity	10	
(f) Wooden cargo boats over 50 tons capacity	7½	
(g) Motor launches	10	
(h) Speed boats*	15	* Speed Boats" means a motor driven boat with a high speed internal combustion engine capable of propelling the boat at a *speed exceeding 15* miles per hour in still water and so designed that when running at speed it will plane—*i e* its bow will rise from the water
8 Mines and Quarries—		
(1) Railway siding† (excluding rails)	5	†Depreciation on rails used for tramways and sidings and in inclines where the rails are the property of the assesee, is allowed at 10 per cent under item 2 above (plant used in connection with Mines and Quarries) in addition to any depreciation allowance on the cost of constructing the tramways sidings or inclines
(2) Shafts	5	
(3) Inclines†	5	
(4) Tramways on the surface† (excluding rails)	10	
9 Aeroplanes—		
(1) Aircraft	25	
(2) Aero engines	33⅓	
(3) Aerial photographic apparatus	20	

8-A. Allowances under section 11 (*2*) (*ii*) of the Act in respect of depreciation of buildings, machinery, plant or furniture shall be in accordance with the rates prescribed in the statement attached to rule 8; and in respect of apparatus, appliances or other capital assets not covered by that statement, the allowance shall be at the rate of 5 per cent. *per annum on the prime cost.*

P. 59. 9. For the purpose of obtaining an allowance for depreciation under proviso (*a*) to section 10 (*2*) (*vi*) of the Act, the assessee shall furnish particulars to the Income-tax Officer in the following form :—

Description of buildings, machinery, plant or furniture.	Original cost.	Capital expenditure during the year for additions, alterations, improvements and extensions.	Date from which used for the purposes of the business.	Particulars (including original cost, depreciation allowed and value realised by sale of scrap value) of obsolete machinery, plant or furniture sold or discarded during the year, with dates on which first brought into use and sold or discarded.	Remarks.
1	1-A	2	3	4	5

I, , declare that to the best of my information and belief the buildings, machinery, plant and furniture described in column 1 of the above statement were the property of during the year ended and that the particulars entered in the statement are correct and complete.

Place *Signature*

Date *Designation*

9 A For the purpose of obtaining an allowance for depreciation under section 11 (*2*) (*ii*) of the Act, the assessee shall furnish particulars to the Income tax Officer in the form included in rule 9, entering in columns 1 and 4 references not only to buildings, machinery, plant or furniture but also to apparatus, appliances and other capital assets

10 All sums deducted in accordance with the provisions of section 18 of the Act shall be paid by the person making the deduction to the credit of the Government of India on the same day as the deduction is made in the case of deduction by or on behalf of Government, and within one week from the date of such deduction in all other cases P. 76.

Provided that the Income tax Officer may, in special cases, and with the approval of the Assistant Commissioner, permit a local authority, company, public body or association or a private employer to pay the income tax deducted from salaries quarterly on June 15th, September 15th, December 15th, and March 15th

11 In the case of income chargeable under the head Salaries' where deduction is not made by or on behalf of Government, the person paying the salary shall send to the Income tax Officer concerned a statement showing the name of the employé from whose salary the tax has been deducted, the period for which the salary has been paid, the gross amount of the salary, the deduction for a provident fund or insurance premia, and the amount of tax deducted The person concerned shall also pay the amount of tax so deducted to the credit of the Government of India within one week from the date of such deduction by remitting it into the Government Treasury, or a branch of the Reserve Bank of India, or of the Imperial Bank of India accompanied by a chalan in the prescribed form, blank copies of which shall be supplied by the Income tax Officer for the purpose Provided that on receipt of the above mentioned statement the Income tax Officer may, if so expressly requested and if satisfied that there is sufficient ground for the request, himself have the necessary chalan prepared and forwarded to the person concerned, who shall thereupon pay the amount to the P. 76.

P. 78. 13-A. The certificate [1] to be furnished under section 18 (9) of the Act by the person paying any interest on debentures or other securities for money issued by or on behalf of a local authority or a company shall be in the following form :—

Name of Local Authority/Company.

Address.

To [2]

Name and address of payee [3]

I/We hereby certify that Rs. being income-tax at the rate of pies per rupee has been deducted from Rs. being the amount of interest at the rate of per cent. per annum due [4] on debentures Nos. of Rs. each of the [5] and that it has been or will, within the prescribed period, be paid by me/us to the Government of India at

Superintendent, Public Debt Office,
or Principal Officer or Managing Agents.

193 .

(To be signed by claimant.)

I hereby declare that the securities on which interest as above specified has been received, were my own property and were in the possession of at the time when income-tax was deducted.

Signature

Date

(*N.B.*—The securities to be produced when required in support of any claim.)

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(1) In the case of bearer debentures or bonds a certificate under section 18 (9) shall only be given if the recipient of the interest declares the name and address of the real owner of the security at the time of receiving the interest.

(2) Name and address of the owner of security should be given here. In the case of bearer debentures or bonds, these particulars are to be given as declared by the payee concerned.

(3) To be completed only in the case of bearer debentures or bonds.

(4) The date on which interest is payable.

(5) Here enter the name of the local authority or the company.

13 B The certificate to be furnished under section 18 (9) of the Act by the person paying any interest not being "interest on securities" shall be in the following form —

Name of person paying interest—

Address —

To

Name and address of payee

I/We hereby certify that Rupees being income tax at the rate of pies per rupee and Rupees being super tax at the rate applicable have been deducted from Rupees being the amount of interest paid on at the rate of per cent per annum for the period (1) computed on the amount of Rupees (2)

Signature of person paying interest

13 C The certificate to be furnished under section 18 (9) of the Act by the person paying any dividend on shares registered in the Reserve Bank of India shall be in the following form —

Name of person paying dividend

Address

To

Name of payee

I hereby certify that Rs being income-tax at the rate of pies per rupee has been deducted from Rs being the amount of dividend at the rate of per cent per annum due (3) on shares of Rs and that

(1) Here specify the period for which interest has been paid.
(2) Here state the amount on which interest has been computed.
(3) Here specify the date on which dividend is payable.

it has been or will, within the prescribed period, be paid by the Bank to the Government of India at

Governor,

Reserve Bank of India.

193 .

(To be signed by claimant.)

I hereby declare that the shares on which dividend as above specified has been received, were my own property and were in the possession of
at the time when income-tax was deducted.

Signature

Date

(*N.B.*—The shares certificates to be produced when required in support of any claim.)

82. 14. The certificate to be furnished by the principal officer of a company under section 20 shall be in the following form :—

(*Name of Company*).

(*Address of Company*.)

Date

Warrant for Rs. (in words and figures or, if the certificate is crossed by an entry in words stating that the amount of dividend is under the next multiple of Rs. 50 above that amount, in figures only) , being dividend ([1]) at the rate of Rs. (in words and figures) per share for the ([2]) /the period from to during the year ending on the day of 19 , ([3]) on ([4]) shares in this Company,

(1) Or dividend and bonus.
(2) Year or half-year, as the case may be.
(3) Here enter whether free of income-tax or not.
(4) Here enter number and description of shares.

registered during the said period/on (Date) in the name of , This dividend was declared at the (1) meeting held on the (2) 193

I/We hereby certify that income tax on the entire/such part as is liable to be charged to Indian Income-tax of the profits and gains of the Company, of which this dividend forms a part, has been, or will be duly paid by me/us to the Government of India

Signature

Date

(To be signed by the claimant)

I hereby certify that the dividend above mentioned relates to shares which were my own property at the time when the dividend was declared/during the period from to /on (Date) and were in the possession of

Signature

Date

15 The returns for Government officers under section 21 of the Act shall be prepared and submitted to the Income tax Officer by — P. 83.

(a) Civil Audit Officers for all gazetted officers and others who draw their pay from audit offices on separate bills and also for all pensioners who draw their pensions from audit offices

---

(1) Here specify number and nature of meeting
(2) Here enter date

(*b*) Treasury officers for all gazetted officers and others who draw their pay from treasuries on separate bills without countersignature; and also for all pensioners who draw their pensions from treasuries.

(*c*) Heads of Civil or Military offices for all non-gazetted officers whose pay is drawn on establishment bills or on bills countersigned by the head of office.

(*d*) Forest disbursing officers and Public Works Department disbursing officers in cases where direct payment from treasuries is not made, for themselves and their establishments.

(*e*) Head postmasters for (*i*) themselves, their gazetted subordinates and the establishments of which the establishment pay bills are prepared by them and (*ii*) gazetted supervising and controlling officers of whose headquarters post office they are in charge and (*iii*) pensioners drawing their pensions through post offices; Head Record Clerks, Railway Mail Service, for themselves and all the staff whose pay is drawn in their establishment pay bills; the Disbursing Officers in the case of the Administrative and the Audit offices.

(*f*) Controllers of Military Accounts (including Divisional Military Supply, Marine, Field and War Controllers) for all gazetted military officers under their audit.

(*g*) Disbursing officers in the Military Works Department for themselves and their establishments.

(*h*) Chief Accounts officers or Chief Auditors of Railways concerned for all railway employés under their audit.

P. 83. 16. The minimum income under the head "Salaries" referred to in section 21 (*a*), shall be Rs. 2,000 per annum.

17. The return to be delivered to the Income-tax Officer under section 21 of the Act shall be in the following form :— P. 83.

Serial number	Name of person	Postal address or residence	Appointment or nature of employment.	Total amount of salary, wages, annuity or pension paid during the year ending on 31st March 19 .	House allowance or value of rent free quarters	Amount of bonus gratuity, fees, commission, perquisites, allowances other than those shown in column 6, profits in lieu of or in addition to salary or wages, and payments (re payments of the employee's own contributions and interest thereon being specified separately) *from private* Provident Funds not recognised under the Indian Income-tax Act, 1922—(each to be shown separately)	Total of columns 5, 6 and 6 A	Deduction on account of provident and other funds [proviso to section 7 (1)]	Deduction on account of Life Insurance premia (section 15)	Net amount chargeable	Amount of tax payable	Reduction under section 17	Amount of tax deducted	If the employé contributes to a recognised provident fund (Chapter IX-A) the amount of the employer's contribution thereto	Remarks
1	2	3	4	5	6	6 A	7	8	8 A	9	10	11	12	12 A	13

I certify that the above statement contains a complete list of the total amounts paid by   to all persons who were receiving income on the 31st day of March 19   at the rate of Rs. 2,000 per annum, or have received during the year ended on that day not less than Rs. 2,000 in respect of salary, wages, annuity, pension, gratuity, fees, commission, perquisites, or profits in lieu of or in addition to salary or wages, and that all the particulars stated are correct.

Signature of person by whom the return is delivered

Date

34. 18. (1) The return of total income of companies required under section 22 (1) shall be in the following form and shall be accompanied by a copy of the profit and loss account referred to therein :—

Total income of the company.

Income, profits, or gains as per profit and loss account for the year ended 19 . . . .

Add.—Any amount debited in the accounts in respect of—

1. Reserve for bad debts . . . .
2. Sums carried to reserve for provident or other funds .
3. Expenditure of the nature of charity or presents . .
4. Expenditure of the nature of capital . . .
5. Income-tax or Super-tax . . . . . .
6. Rental value of property owned and occupied . . .
7. Cost of additions to, or alteration, extensions, improvements of, any of the assets of the business . . .
8. Interest on reserve or other funds . . . . .
9. Losses sustained in former years . . . . .
10. Losses recoverable under an insurance or contract of indemnity . . . .
11. Depreciation of any of the assets of the company . .
12. Expenses not incurred solely for the purpose of earning the profits . . . .

TOTAL Rs. .

Deduct.—Any profits or income included in the accounts on account of—

(a) Interest (net amount) on securities taxed at source . .
(b) Interest on securities tax-free . . . . . .
(c) Dividends (net amount) from companies taxed in British India . . . .
*(d) Other items already taxed at source (specify detail) . .

BALANCE Rs. .

If the company owns any property not occupied for the purposes of the business, a statement in the form prescribed in Schedule A to rule 19 should be attached with particulars of the credit and debit on account of such property entered in the accounts.

Declaration.

I, the [Secretary, etc., (see section 2 (12) of the Act)] of the (name of Company) declare that the information against each head in this return is correctly

*NOTE.—If any other deduction is to be claimed, please give particulars thereof in a separate letter to be forwarded with the return.

given as shown in the books of the Company as also in the accounts which have been duly audited by the auditors of the Company and which have been adopted by the shareholders of the Company

(*Signature*)

(*Designation*)

Dated 19

(2) The company shall also attach to the return a statement showing the sums charged in the accounts under the provisions of section 58 K (2)

19 The return of total income for individuals, firms, Hindu undivided families and other associations of individuals not being companies required under section 22 (2) shall be in the following form — P. 85

Statement of total income during the previous year

1 Sources of Income	2 Amount of profits or gains or income during the previous year	3 Tax already charged on the income
	Rs	Rs
1 Salaries (including wages annuity pension gratuity, fees commission allowances perquisites including rent free quarters) or profits received in lieu of or in addition to salary or wages [See note (1)]		
1 A The contributions made by an employer to the account in a recognised provident fund of the person making the return		
1 B The interest accruing to the account mentioned in 1 A which is not exempt from income tax [section 58 F (2)]		
1 C Interest accruing to the account mentioned in 1 A which is exempt from income tax [section 58 F (2)]		
2 Interest on securities (including debentures) already taxed ,, (2)		
3 Interest on securities of the Government of India or of local Governments declared to be income tax free ,, (3)		
4 Property as shown in detail in Schedule A ,, (4)		

Statement of total income during the previous year—contd.

1 Sources of Income.	2 Amount of profits or gains or income during the previous year.	3 Tax already charged on the income.
	Rs.	Rs.
5. Business, trade, commerce, manufacture, or dealings in property, shares or securities (details as in note 5) . . . [See note (5)]		
6. Profession . . . . . . ,, (6)		
7. Dividends from Companies (net) . ,, (7)		
8. Interest on mortgages, loans, fixed deposits, current accounts, etc., not bearing income from business		
9. Ground rent		
"9 (A)—Income of wife, minor child and association of individuals [Section 16 (3)]—[See note (10)]".		
10. Any source other than those mentioned above including any income earned in partnership with others . . . . ,, (8)		
Total .		
Deductions claimed—		
(*a*) on account of insurance premia . . .		
(*b*) on account of contributions to a provident fund to which the Provident Funds Act applies		
(*c*) on account of contributions to a recognised provident fund section 58-A(*a*)].		
(*d*) On account of interest on contributions to a recognised provident fund and accumulations thereof which is exempt from income-tax [section 58-F. (2)]		
(*e*) others		

I declare that to the best of my knowledge and belief the information given in the above statement is correct and complete, that the amounts of income shown are truly stated and relate to the year ended   and that no other income accrued or arose or was received by me/the firm/the family/the association during the said year and that I/the firm/the family/the association had during the said year no other sources of income.

Signature

Date

N.B.—(*a*) Income accruing to you outside British India received in British India is liable to taxation, and must be entered by you in the form.

(*b*) All income from whatever source derived must be entered in the form, including income received by you as a partner of a firm.

Note 1.—In column 2 should be shown the gross amount of salary and not the net amount after deduction on account of income-tax, provident funds, etc.

NOTE 2 — Interest on securities means the interest on promissory notes or bonds issued by the Government of India or a local Government, or the interest on debentures or other securities for money issued by or on behalf of a local authority or company Where income tax has been deducted from the interest, or where the interest has been paid income tax free, the amount of tax so deducted or paid should be added to the amount of interest actually received, and the gross amount so arrived at should be entered in column 2 of the statement The term ' interest on securities does not include interest on fixed deposits or mortgages or other loans, which have to be shown under heading 8

The interest on securities of the Government of India or of local Governments declared to be income tax free should be shown under head 3 Those which are not declared to be income tax free should be included under this head

Entries under this head must be supported by the certificate issued by the person or company paying the interest under section 18 (9) of the Act

NOTE 3 —(a) The income tax payable on the interest receivable on a security of a Local Government issued income tax free is payable by the local Government and not by the holder of the security

(b) Only the interest on securities of the *Government of India* or of a local Government declared to be income tax free should be entered against this head Such interest will not be charged to income tax, but it must be included in the statement of total income in order to ascertain the rate of income tax chargeable on other income *It is chargeable to super tax*

(c) Particulars of any interest on securities issued by other authorities and stated to be free of income tax should be entered against head 2, as income tax on such interest is actually paid by these authorities on behalf of the recipients

NOTE 4 —The tax is payable under this head in respect of the *bona fide* annual value of any buildings or lands appurtenant thereto of which you are the owner, other than such portions of such buildings and lands as you may occupy for the purpose of your business

SCHEDULE A

								Deductions								
Serial number	Name of village or town where the property is situated	Name of mohalla or street and number of property, if any	In the case of Municipalities the name of the person in whose name the property stands in the municipal registers	Where the property is occupied by owner or is let	Annual letting value of the property	Period during which the property remained vacant	Amount of rent actually received for the property if let	Of one sixth of the annual letting value shown in column 6	Premium paid to insure the property against damage or destruction	Interest on a mortgage or charge on the property	Ground rent paid for the property	Land revenue paid for the property	Collection charges paid.	Amount claimed on account of property remaining vacant	Total of columns 8 to 13 A	Net amount to be carried over to the front of the form
1	2	3	4	5	6	6 A	7	8	9	10	11	12	13	13A	14	15

NOTE 5.—(*a*) Where you keep your accounts on the mercantile accountancy or book profits system, you must file return in the following form :—

Income, profits or gains from business, trade, commerce.

	Rs.
Income, profits or gains as per Profit and Loss Account for the year ended 19 .	
Add.—Any amount debited in the accounts in respect of—	
1. Reserve for bad debts	
2. Sums carried to reserve for provident or other funds .	
3. Expenditure of the nature of charity or presents . .	
4. Expenditure of the nature of capital	
5. Income-tax or Super-tax	
6. Drawings or salary of proprietor, drawings of partners and salary of partners	
7. Rental value of property owned and occupied . . .	
8. Cost of additions to, or alterations, extensions, improvements of any of the assets of the business . . .	
9. Interest on the proprietor's or partner's capital including interest on reserve or other funds	
10. Losses sustained in former years	
11. Losses recoverable under an insurance or contract of indemnity	
12. Depreciation of any of the assets of the business . .	
13. Private or personal expenses and expenses not incurred solely for the purpose of earning the profits . .	
TOTAL . .	
Deduct.—Any profits included in the account already charged to Indian income-tax and the interest on securities of the Government of India or of Local Governments declared to be income-tax free	
BALANCE . .	

Signature of the person making the return.

Date.

State here amount of salary paid to a *partner* and *not* added back on the ground that it is not an appropriation of profit. Rs.

(*b*) Where you do not keep your accounts on the mercantile accountancy or book profits system, but on a cash basis you must file a statement showing how you arrive at the taxable profits, *i.e.*, showing details of the gross receipts and of the expenditure you propose to set against those receipts specifying separately salary paid to partners and deducted from gross receipts as not being an appropriation of profit. No deductions are permissible on account of—

(*i*) Property owned and occupied by the owner of a business for the purposes of a business;

(*ii*) Additions to or alterations, extensions or improvements of any of the assets of the business;

(*iii*) Interest on the capital of the proprietors or partners of the business;

(*iv*) Bad debts not actually written-off in the accounts;

(*v*) Losses sustained in previous years;

(*vi*) Reserves of any kind;

(*vii*) Sums paid on account of the income-tax or super-tax or any tax levied by a local authority other than local rates or municipal taxes in respect of the portion of the premises used for the purpose of the business;

(*viii*) Any expenditure of the nature of charity or a present;

(*ix*) Any expenditure of the nature of capital;

(*x*) Any loss recoverable under an insurance or a contract of indemnity;

(*xi*) Depreciation of any kind other than that specified in the Act;

(*xii*) Drawings or salary of proprietor, drawings of partners and salary of partners if it be an appropriation of profits;

(xiii) Private or personal expenses of the assessee,

(xiv) Any expenditure of any kinds which is not incurred solely for the purpose of earning the profits

If you have included any such sums in your expenditure in your books, you must exclude them from the expenditure permissible for the purpose of arriving at your taxable profits

(c) You are also required to attach a statement showing the sums charged in your accounts under the provisions of section 58 K (2)

NOTE 6—The income, profits or gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of such profession or vocation, provided that no allowance is made on account of any of your personal expenses Professional fees received by you in any part of India (whether within British India or not) must be included by you in your receipts

NOTE 7—Income tax chargeable on the profits of companies is paid by the companies, so that the dividends received by shareholders represent the net amount remaining after any income tax due by the company has been paid This amount should be entered in column 2 of the statement The proportionate tax will be added in the income tax Office

If the rate of tax applicable to your total income is less than the rate of tax applicable to the profits or gains of the company at the time of the declaration of such dividends, you may, by attaching the company's certificate received with the dividends, have the excess collected on your dividends from the company set against the tax payable by you on your other income instead of having to apply separately for a refund

NOTE 8—Agricultural income from land not paying land revenue or local rates to an authority in British India should be included under this head or under income from business according to circumstances

NOTE 9—Deductions from total income can only be made for insurance premia in respect of insurance on your own life or on the life of your wife, or in respect of a contract for a deferred annuity on your own life or on the life of your wife No deduction is permissible in the case of any other form of insurance except in the case of Hindu undivided families where deductions are permissible on account of premia paid in respect of insurance on the life of any male member of the family or of his wife The original receipt or the certificate of the insurance company to which the premium was paid must be attached to the return

"NOTE 10—(a) Under Head 9 A you should enter so much of the income of your wife or minor child as arose directly or indirectly—

(i) from the membership of your wife in a firm of which you are a partner,

(ii) from the admission of your minor child to the benefits of partnership in a firm of which you are a partner,

(iii) from any assets transferred by you directly or indirectly to your wife otherwise than for adequate consideration or in connection with an agreement to live apart, and

(iv) from any assets transferred by you directly or indirectly to your minor child, not being a married daughter

(b) Under this head you should also enter so much of the income of any association of individuals consisting of yourself and your wife as arises from any assets transferred by you to such association"

20 The Notice of Demand under section 29 shall be in the following form:— P. 100

NOTICE OF DEMAND UNDER SECTION 29 OF THE INCOME-TAX ACT, 1922.

To

1. You have been assessed for the year to income-tax amounting to Rs. [in addition to which a

penalty of Rs. has been imposed], as shown in the copy of the assessment form sent herewith.

2. You have also been assessed to super-tax amounting to Rs. .

3. You are required to pay the amount of Rs. on or before the to at when you will be granted a receipt.

4. If you do not pay the tax on or before the date specified above, you will be liable to a penalty which may be as great as the tax due from you.

5. If you are dissatisfied with your assessment you may present an appeal under sub-section (*1*) of section 30 of the Indian Income-tax Act, 1922, to the Assistant Commissioner of Income-tax at within 30 days from the receipt of this notice, on a petition duly stamped in the form prescribed under sub-section (*3*) of section 30 and verified as laid down in that form.

Or

The assessment has been made under sub-section (*4*) of section 23 of the Indian Income-tax Act, 1922, because you failed to make a return of your income under section 22/ to comply with a notice under sub-section (*4*) of section 22/ to comply with a notice under sub-section (*2*) of section 23, and no appeal lies. But if you were prevented by sufficient cause from making the return or did not receive the notice(s) aforesaid, or had not a reasonable opportunity to comply, or were prevented by sufficient cause from complying, with the terms of the notice(s), you may apply to me within one month from the receipt of this notice under section 27, to cancel the assessment and proceed to make a fresh assessment.

6. The appropriate chalan should be sent along with the amount paid. Should you lose the chalans attached to this notice of demand, it will be necessary for you to apply to the Income-tax Officer for copies of fresh chalans.

Dated *19* .

Income-tax Officer.

Place

NOTE.—The superfluous words in paragraph 5 should be deleted.

ASSESSMENT FORM

ASSESSMENT FOR 193 -193 UNDER SECTION , ACT XI OF 1922

, *District or Area*

Name of assess Number in General Index

Address Number of miscellaneous record

Serial No	Detailed sources of income	Amount of income	Tax deducted at source	Remarks
		Rs	Rs A	
1	Salary (including employee s provident fund contributions)			
1A	Annual accretion (less employee s provident fund contribution) under section 58A (*f*)			
2	Interest on securities			
3	Property			
4	Business			
5	Profession			
6	Other sources			

	Rs A	Rs A
(*i*) Total income		
(*ii*) Deduction under section 7 (*i*) or on account of provident fund, to which the Provident Fund Act 1897 applies		
(*iii*) Deduction on account of recognised provident fund— (*a*) Contributions (*b*) Exempted interest		
(*iv*) Deduction on account of insurance premia		
(*v*) Deduct sums received as dividends or from a firm the profits of which have been charged to income tax		
(*vi*) Deduct amount of interest from tax free securities of the Government of India or of a Local Government		
(*vii*) Income now to be subjected to income tax		
(*viii*) Rate applicable pies per rupee		
(*ix*) Amount of income tax		

	Rs.	A.	Rs.	A.
(x) Deduction under section 17				
(xi) Amount of deductions at source from salary or interest on securities for which credit is given under section 18 (5).				
(xii) Abatement on account of dividends (at............ pies per rupee).				
(xiii) Abatement on account of income from a registered firm (at............pies per rupee).				
(xiv) Net amount of income-tax (or refund) . . .				
(xv) Amount of super-tax				
(xvi) Penalty under section 28 or section 25 (2) . .				
(xvii) Total sum payable (or to be refunded—in figures as well as in words).				

Rupees..............

annas..............

Dated *193* .

Income-tax Officer.

Classification of demand.

Serial No.	Classification.	Amount of tax. Rs.	As.
1	Salaries—		
	(a) Paid by Government		
	(b) ,, a local authority		
	(c) ,, companies, other bodies and associations .		
	(d) ,, private employers		
2	*Interest on securities—		
	(a) on securities of the Government of India . .		
	(b) ,, ,, local Governments . .		
	(c) on debentures and other securities of a local authority or company.		
3	Income derived from property		
4	,, ,, ,, business . . .		
5	Professional earnings		
6	Income derived from other sources		
	Total .		
	Deduction on account of section 7 (i), 15 or 58F . .		
	Deduction on account of section 17		
	Total of refunds and rebates as in the classification cage below.		
	Penalty under section 25 (2)		
	,, ,, ,, 28		
	Net demand (or refund)		

*Where the result of an assessment is an abatement the sum allowed as a refund or rebate should be entered in the classification cage below.

*Classification of refunds and rebates.

Source of income	Rate of refund or rebate	Amount of refund or rebate	
		Rs	A

* Items (xii) and (xiii) on pre page and abatement regarding securities

Record of cash refunds

Date of issue of notice of demand					
	Number of voucher Date of voucher Amount of refund Reason for refund				

† Return
N=Not submitted
A=Submitted and accepted
R=Submitted but assessment not based on it

† Accounts
N=Not submitted
A=Submitted and accepted
R=Submitted, but assessment not based on them

† NOTE —For the purpose of compiling Annual Return No VIII, I T Os hould invariably strike out the inapplicable entries

P. 101. 21. An appeal under section 30 shall, in the case of an appeal against a refusal of an Income-tax Officer to make a fresh assessment under section 27, be in Form A; in the case of an appeal against an order of an Income-tax Officer under section 25 (*2*) in Form C; in the case of an appeal against the order of an Income-tax Officer under section 25-A in form C (1); in the case of an appeal against an order of an Income-tax Officer under section 28 in Form D; in the case of an appeal against a refusal of an Income-tax Officer to register a firm under section 26-A in Form D-1 and in other cases in Form B.

FORM A.

Form of appeal against an order refusing to reopen an assessment under section 27.

To

The Assistant Commissioner of

The day of 19 .

The petition of of post office,

District sheweth as follows :—

1. Under the Indian Income-tax Act, 1922, your petitioner has been assessed on the sum of Rs. for the year commencing the 1st day of April 19 .

2. Your petitioner was prevented by sufficient cause from making the return required by section 22 or did not receive the notice issued under sub-section (*4*) of section 22, or sub-section (*2*) of section 23, or had not a reasonable opportunity to comply or was prevented by sufficient cause from complying with the terms of the notice under sub-section (*4*) of section 22 or sub-section (*2*) of section 23, as more particularly specified in the statement attached.

3. Your petitioner therefore presented a petition to the Income-tax Officer under section 27, requesting him to cancel the assessment. This petition, the Income-tax Officer, by his order dated of which a copy is attached, has rejected.

4. Your petitioner therefore requests that the order of the Income-tax Officer may be set aside and that he may be directed to make a fresh assessment in accordance with the law.

Signed

STATEMENT OF FACTS

Form of verification

I, , the petitioner, named in the above petition, do declare that what is stated therein and in the above statement of facts is true to the best of my information and belief

Signed

FORM B

Form of appeal against assessment to Income-tax

To

The Assistant Commissioner of
The day of 19
The petition of of post office,
District sheweth as follows —

1 Under the Indian Income tax Act, 1922, your petitioner has been assessed on the sum of Rs for the year commencing the 1st day of April 19 The notice of demand attached hereto was served upon him on

2 Your petitioner's income accruing or arising or received or deemed under the provisions of the Act to accrue or arise or to be received in British India for the year ending the day of 19 amounted to Rs

3 Such income and profits actually accrued or arose or were received during the period of months and days

4 During the said year your petitioner had no other income or profits

5 Your petitioner has made a return of his income to the Income tax Officer under section 22, sub section *(2)* of the Act and has complied with all the terms of the notice served on him by the Income tax Officer under section 23 *(2)*, and/or [section 22 *(4)*]

Your petitioner therefore prays that he may be assessed accordingly (or that he may be declared not to be chargeable under the Act)

Signed

GROUNDS OF APPEAL.

Form of verification.

I, , the petitioner, named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

Signed

FORM C.

Form of appeal against an order under section 25 (2).

To

The Assistant Commissioner of Income-tax.

The day of 19 .

The petition of of post office,

District sheweth as follows :—

1. Under section 25 (2) of the Indian Income-tax Act, 1922, a penalty of Rs. has been imposed on your petitioner. The notice of demand attached hereto was served upon him on

2. Your petitioner was prevented by sufficient cause as more particularly explained below from giving notice within the time prescribed by section 25 (2) to the Income-tax Officer of the discontinuance of his business, profession or vocation.

3. Your petitioner therefore requests that the order of the Income-tax Officer imposing a penalty of Rs. upon your petitioner may be set aside.

Signed

STATEMENT OF FACTS.

Form of verification.

I, , the petitioner, named in the above petition, do declare that what is stated therein and in the above statement of facts is true to the best of my information and belief.

Signed

FORM C (1)

Form of Appeal against an Order under Section 25 A

To

The Assistant Commissioner of Income tax,

The day of 193

The petition of of Post Office, District sheweth as follows —

Under section 25 A of the Indian Income tax Act, 1922, your petitioner/petitioners who belonged to a Hindu Family, hitherto assessed as undivided, claimed before the Income-tax Officer at the time of assessment that a partition had taken place among the members of the family and that the joint family property had been partitioned among the various members (or group of members) in definite portions and prayed that an order might be passed to this effect as laid down in section 25 A (*1*) and that an assessment be levied as laid down in section 25 A (*2*)

2 By his order dated the a copy of which is herewith attached, the Income tax Officer has refused to pass the order referred to above and make assessments accordingly as laid down in section 25 A (*2*) Your petitioner/petitioners therefore request(s) that the Income tax Officer may be directed to pass such an order under section 25 A (*1*) and to levy an assessment as laid down in section 25 A (*2*)

Signed

GROUNDS OF APPEAL

Form of verification

I/We the petitioner/petitioners, named in the above petition do hereby declare that what is stated therein is true to the best of my/our information and belief

Signed

FORM D.

Form of appeal against an order under section 28.

To

The Commissioner of Income-tax/The Assistant Commissioner of Income-tax,

The day of 19 .

The petition of of post office, District, sheweth as follows :—

1. Under section 28 of the Indian Income-tax Act, 1922, a penalty of Rs. has been imposed on your petitioner by the Income-tax Officer/Assistant Commissioner. The notice of demand attached hereto was served upon him on

2. Your petitioner did not conceal the particulars of his income or deliberately furnish inaccurate particulars thereof but, as will be seen from the statement of facts attached, returned it at its real amount to the best of his knowledge and belief.

3. Your petitioner therefore requests that the order of the Income-tax Officer/Assistant Commissioner imposing a penalty of Rs. upon your petitioner may be set aside.

Signed

STATEMENT OF FACTS.

Form of verification.

I, , the petitioner, named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

Signed

FORM D 1

Form of appeal against an order refusing to register a firm under section 26-A

To

The Assistant Commissioner of

The day of 19

The petition of of post office, District sheweth as follows —

Under section 26 A of the Indian Income tax Act, 1922, your petitioner applied to the
Income tax Officer
for the registration of the firm

By his order dated the
a copy of which is herewith attached the Income tax Officer has refused to register the said firm

Your petitioner therefore requests that the order of the Income tax Officer may be set aside and that he may be directed to register the firm

Signed

GROUNDS OF APPEAL

Form of verification

I, , the petitioner, named in the above petition do hereby declare that what is stated therein is true to the best of my information and belief

Signed

21-A. An appeal under section 50-A shall be in the following form :—

Form of appeal against an order refusing to grant a refund under Section 48, 48-A or 49.

To

The Assistant Commissioner of

The day of 19 .

The petition of of post office, District sheweth as follows :—

Your petitioner applied to the Income-tax Officer for a refund under section 48/48-A/49 of the Indian Income-tax Act, 1922, of Rs. . The Income-tax Officer has by his order dated the of which a copy is attached rejected the application. / granted a refund of only Rs.

Your petitioner therefore requests that the order of the Income-tax Officer may be set aside and the refund asked for may be granted.

Signed

GROUNDS OF APPEAL.

Form of verification.

I, , the petitioner named in the above petition do declare that what is stated therein is true to the best of my information and belief.

Signed

03. 22. An appeal under section 32 (2) shall in the case of an appeal against an order of an Assistant Commissioner under section 28 be in Form D attached to Rule 21 and in other cases in Form E.

FORM E

To

The Commissioner of Income tax,

The day of 19

The petition of sheweth as follows —

1 Under section 31 (3) of the Indian Income tax Act, 1922, the Assistant Commissioner of has increased the tax payable by your petitioner from Rs to Rs

2 Your petitioner prays that the enhancement may be set aside or reduced to Rs for the reasons stated below

Signed

GROUNDS OF APPEAL

Form of verification

I, , the petitioner, named in the above petition, do declare that what is stated therein is true to the best of my information and belief

Signed

22 A An appeal to the Commissioner for a reference to a Board of Referees shall, in cases falling under sub section (1) of section 23 A, be in form F, and, in cases falling under sub section (2) of section 23 A, be in Form G

FORM F

To

The Commissioner of Income tax,

The day of 19

The petition of sheweth as follows —

1 The Income tax-Officer of , with the previous approval of the Assistant Commissioner of has passed an order dated of which a copy is attached under sub section (1) of section 23-A of the Indian Income tax Act 1922, that the sum payable as income tax by the firm/association known as

shall not be determined and that the share of your petitioner in the profits and gains of the said firm/association shall be included in his total income for the purpose of assessment; and a notice of the said order has been served upon your petitioner on the day of .

2. Your petitioner, being aggrieved, for the reasons stated below, by the order of the Income-tax Officer, prays that the said order may be set aside.

Signed

GROUNDS OF APPEAL.

Form of verification.

I, , the petitioner, named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

Signed

FORM G.

To

The Commissioner of Income-tax.

The day of 19 .

The petition of sheweth as follows :—

1. The Income-tax Officer of , with the previous approval of the Assistant Commissioner of has passed an order dated of which a copy is attached under sub-section (*2*) of section 23-A of the Indian Income-tax Act, 1922, that the sum payable as income-tax by the company known as the shall not be determined and that the proportionate share of your petitioner in the profits and gains of the said company shall be included in his total income for the purpose of assessment; and a notice of the said order has been served upon your petitioner on the day of .

2. Your petitioner, being aggrieved, for the reasons set out below, by the order of the Income-tax Officer, prays that the said order may be set aside.

Signed

GROUNDS OF APPEAL

Form of verification

I, , the petitioner, named in the above petition, do declare that what is stated therein is true to the best of my information and belief

Signed

23 (1) In the case of income derived in part from agriculture and in part from business an assessee shall be entitled to deduct from such income the market value of any agricultural produce raised by him or received by him as rent in kind which he has utilized as raw material for the purposes of his business or the sale receipts of which are included in the accounts of his business The balance of such income shall be deemed to be income derived from the business and no further deduction shall be made therefrom in respect of any expenditure incurred by the assessee as a cultivator or receiver of rent in kind **P. 2.**

(2) For the purposes of sub rule (*1*) "market value" shall be deemed to be — **P. 2.**

(*a*) Where agricultural produce is originally sold in the market in its raw state, or after application to it of any process ordinarily employed by a cultivator or receiver of rent in kind to render it fit to be taken to market, the value calculated according to the average price at which it has been so sold during the year previous to that in which the assessment is made

(*b*) where agricultural produce is not ordinarily sold in the market in its raw state, the aggregate of—

(1) the expenses of cultivation,

(2) the land revenue or rent paid for the area in which it was grown, and

(3) such amount as the Income tax officer finds, having regard to all the circumstances in each case to represent a reasonable rate of profit on the sale of the produce in question as agricultural produce

24. Income derived from the sale of tea grown and manufactured by the seller in British India shall be computed as if it were income derived from business, and 40 per cent. of such income shall be deemed to be income, profits and gains liable to tax:

Provided that in computing such income an allowance shall be made in respect of the cost of planting bushes in replacement of bushes that have died or become permanently useless in an area already planted, unless such area has previously been abandoned.

41. 25. In the case of Life Assurance Companies incorporated in British India whose profits are periodically ascertained by actuarial valuation, the income, profits and gains of the Life Assurance Business shall be the average annual net profits disclosed by the last preceding valuation, provided that any deductions made from the gross income in arriving at the actuarial valuation which are not admissible for the purpose of income-tax assessment, and any Indian income-tax deducted from or paid on income derived from investments before such income is received, shall be added to the net profits disclosed by the valuation.

41. 26. Rule 25 shall apply also to the determination of the income, profits and gains derived from the annuity and capital redemption business of life assurance companies the profits of which can be ascertained from the results of an actuarial valuation.

41. 27. If the Indian income-tax deducted from interest on the investments of a company exceeds the tax on the income, profits and gains thus calculated, a refund may be permitted of the amount by which the deduction from interest on investments exceeds the tax payable on such income, profits and gains.

41. 28. In the case of other classes of insurance business (fire, marine, motor car, burglary, etc.) of a company incorporated in British India, the income, profits or gains shall be determined in accordance with the provisions of the Act subject to the allowance specified in the rule next following.

41. 29. If in the ordinary accounts of any insurance business other than Life Assurance, Annuity, or Capital

Redemption Business carried on by an Insurance Company any amount is actually charged against the receipts for the sole purpose of forming a reserve to meet outstanding liabilities or unexpired risk in respect of policies which have been issued (including risk of exceptional losses) and is not used for any other purpose such amount may be treated as expenditure incurred solely for the purpose of earning the profits of the business

30 Any amount either written off in the accounts or P. 141.
through the Actuarial Valuation Balance Sheet to meet depreciation of, or loss on securities or other assets or which is carried to a reserve fund formed for that sole purpose and not used for any other purpose may be treated as expenditure incurred solely for the purpose of earning the profits of the business Any sums taken credit for in the accounts or Actuarial Valuation Balance Sheet on account of appreciation of or gains on the securities or other assets shall be deemed to be income chargeable to tax subject always to deduction of such portion thereof as has been otherwise taken into account in calculating the income, profits or gains

31 The income, profits and gains of companies carry P. 141.
ing on Dividing Society or Assessment business shall be taken at 15 per cent of the premium income in the previous year and in the case of non resident companies at 15 per cent of the Indian premium income in the previous year

32 Notwithstanding anything contained in rules 25 P. 141.
to 31 the total income, however, of an insurance company carrying on more than one class of business shall be determined by its aggregate income from all classes of businesses

33 In any case in which the Income tax Officer is of P. 111.
opinion that the actual amount of the income, profits or gains accruing or arising to any person residing out of British India whether directly or indirectly through or from any business connection in British India cannot be ascertained, the amount of such income profits or gains for the purposes of assessment to income tax may be calculated on such percentage of the turnover so accruing or

24. Income derived from the sale of tea grown and manufactured by the seller in British India shall be computed as if it were income derived from business, and 40 per cent. of such income shall be deemed to be income, profits and gains liable to tax:

Provided that in computing such income an allowance shall be made in respect of the cost of planting bushes in replacement of bushes that have died or become permanently useless in an area already planted, unless such area has previously been abandoned.

P. 141. 25. In the case of Life Assurance Companies incorporated in British India whose profits are periodically ascertained by actuarial valuation, the income, profits and gains of the Life Assurance Business shall be the average annual net profits disclosed by the last preceding valuation, provided that any deductions made from the gross income in arriving at the actuarial valuation which are not admissible for the purpose of income-tax assessment, and any Indian income-tax deducted from or paid on income derived from investments before such income is received, shall be added to the net profits disclosed by the valuation.

P. 141. 26. Rule 25 shall apply also to the determination of the income, profits and gains derived from the annuity and capital redemption business of life assurance companies the profits of which can be ascertained from the results of an actuarial valuation.

P. 141. 27. If the Indian income-tax deducted from interest on the investments of a company exceeds the tax on the income, profits and gains thus calculated, a refund may be permitted of the amount by which the deduction from interest on investments exceeds the tax payable on such income, profits and gains.

P. 141. 28. In the case of other classes of insurance business (fire, marine, motor car, burglary, etc.) of a company incorporated in British India, the income, profits or gains shall be determined in accordance with the provisions of the Act subject to the allowance specified in the rule next following.

. 141. 29. If in the ordinary accounts of any insurance business other than Life Assurance, Annuity, or Capital

Redemption Business carried on by an Insurance Company any amount is actually charged against the receipts for the sole purpose of forming a reserve to meet outstanding liabilities or unexpired risk in respect of policies which have been issued (including risk of exceptional losses) and is not used for any other purpose such amount may be treated as expenditure incurred solely for the purpose of earning the profits of the business

30 Any amount either written off in the accounts or P. 141.
through the Actuarial Valuation Balance Sheet to meet depreciation of, or loss on securities or other assets, or which is carried to a reserve fund formed for that sole purpose and not used for any other purpose, may be treated as expenditure incurred solely for the purpose of earning the profits of the business Any sums taken credit for in the accounts or Actuarial Valuation Balance Sheet on account of appreciation of or gains on the securities or other assets shall be deemed to be income chargeable to tax subject always to deduction of such portion thereof as has been otherwise taken into account in calculating the income, profits or gains

31 The income, profits and gains of companies carry- P. 141.
ing on Dividing Society or Assessment business shall be taken at 15 per cent of the premium income in the previous year and, in the case of non-resident companies, at 15 per cent of the Indian premium income in the previous year

32 Notwithstanding anything contained in rules 25 P. 141.
to 31, the total income, however, of an insurance company carrying on more than one class of business shall be determined by its aggregate income from all classes of businesses

33 In any case in which the Income tax Officer is of P. 111.
opinion that the actual amount of the income, profits or gains accruing or arising to any person residing out of British India whether directly or indirectly through or from any business connection in British India cannot be ascertained, the amount of such income, profits or gains for the purposes of assessment to income tax may be calculated on such percentage of the turnover so accruing or

arising as the Income-tax Officer may consider to be reasonable, or on an amount which bears the same proportion to the total profits of the business of such person (such profits being computed in accordance with the provisions of the Indian Income-tax Act) as the receipts so accruing or arising bear to the total receipts of the business, or in such other manner as the Income-tax Officer may deem suitable.

P. 111. 34. The profits derived from any business carried on in the manner referred to in section 42 (*2*) of the Act may be determined for the purposes of assessment to income-tax *according to the preceding rule.*

P. 111, 141. 35. The total income of the Indian branches of non-resident insurance companies (Life, Marine, Fire, Accident, Burglary, Fidelity Guarantee, etc.), in the absence of more reliable data may be deemed to be the proportion of the total income, profits or gains, of the companies, corresponding to the proportion which their Indian premium income bears to their total premium income. For the purpose of this rule, the total income, profits or gains of non-resident Life Assurance Companies whose profits are periodically ascertained by actuarial valuation shall be computed in the same manner as is prescribed in rule 25 for the computation of income, profits and gains of Life Assurance Companies incorporated in British India.

P. 116. 36. In the case of a person resident in British India, an application for a refund of income-tax under section 48 of the Act shall be made in the following form:—

Application for refund of income-tax.

I, , of do hereby state that my total income computed in accordance with section 16 of the Indian Income-tax Act, XI of 1922, accruing or arising or received in British India, or deemed under the Act to accrue or arise or to be received in British India, during the year ending on the 31st March 19 , amounted to Rs. only.

I therefore pray for a refund of

Rs. under "Salaries".

Rs. under "Securities". (The portion not required should be scored out.)

Rs. under "Dividends from companies".

Rs. under "Share of profits of the registered firm" known as of which I am a partner.

Signature.

I hereby declare that I am resident in British India, and that what is stated in this application is correct.

Dated *19* .

Signature.

36-A (*a*). In the case of a person not resident in British India, an application for a refund of income-tax under section 48 of the Act shall be made in the following form:— P. 116.

Application for refund of income-tax.

I, , of residing at in (country) do hereby state that my total income computed in accordance with section 48 (4) of the Indian Income-tax Act, 1922, during the year ending on the 31st March 19 , amounted to Rs. only, as per return enclosed

I therefore pray for a refund of

(The portion not required should be scored out.)

Rs. under "Salaries".

Rs. under "Securities".

Rs. under "Dividends from companies".

Rs. under "Share of profits of the registered firm" known as of which I am a partner.

Signature.

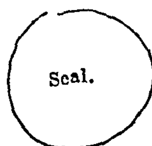
I hereby declare that I am a British subject (See note 2)/subject of State being a State in India. I also declare that what is stated in this application is correct.

Dated 19 .

Signature.

Sworn before me (Name) .

Designation *Signature* at on



NOTE 1.—The above declaration shall be sworn (*a*) before a Justice of the Peace, a Notary Public or Commissioner of Oaths if the applicant for refund resides in any part of His Majesty's Dominions outside British India, (*b*) before a Magistrate or other official of the State of a Political Officer if he resides in a State in India, (*c*) before a British Consul if he resides elsewhere.

NOTE 2.—"British subject" means a person who is a natural-born British subject, or a person to whom a certificate of naturalization has been granted.

(*b*) An application for such a refund from a person not resident in British India who has made a similar application as a non-resident in the preceding year shall, unless the Income-tax Officer directs in any particular

case that the application be made in the form prescribed in sub rule (*a*), be made in the following form —

Application for refund of income tax

I, of residing at in (country) do hereby state that my total income computed in accordance with section 48 (*4*) of the Indian Income tax Act, 1922, during the year ending on the 31st March 19 , amounted to Rs only, as per return enclosed

I therefore pray for a refund of

Rs under "Salaries"

Rs under "Securities"

Rs under "Dividends from companies"

Rs under "Share of profits of the registered firm" known as of which I am a partner

(The p not req should scored

Signature

I hereby declare that I am a British subject (see note)/subject of State being a State in India I also declare that what is stated in this application is correct and that I duly applied for a similar refund as a non resident last year

Dated *19*

Signature

NOTE — British subject means a person who is a natural born British subject or a person to whom a certificate of naturalization has been granted

37 The application under rule 36 shall be accompanied by a return of total income in the form prescribed under section 22 unless the applicant has already made such a return to the Income tax Officer P. 11

37 A The application under Rule 36 A shall be accompanied by a return of total income in the following form the details of Part I of which but not the total may

be omitted if the person has already submitted a return under section 22 (2) for the same year :—

PART I.

Statement of total income accruing or arising or received in British India, or deemed under the Act to accrue or arise or to be received in British India, during the previous year.

1 Sources of income.		2 Amount of profits or gains or income during the previous year.	3 Tax already charged on the income.
		Rs. A.	Rs. A.
1. Salaries (including wages, annuity, pension, gratuity, fees, commission, allowances, perquisites, including rent-free quarters) or profits received in lieu of or in addition to salary or wages	(See Note 1)		
1-A. The contributions made by an employer to the account in a recognised provident fund of the person making the return .			
1-B. The interest accruing to the account mentioned in 1-A which is not exempt from income-tax [Section 58-F (2)] . . .			
2. Interest on securities (including debentures) already taxed .	(See Note 2)		
3. Interest on securities of the Government of India or of Local Governments declared to be income-tax free	(See Note 3)		
4. Property as shown in detail in Schedule A	(See Note 4)		
5. Business, trade, commerce, manufacture, or dealings in property, shares or securities (details as in note 5)	(See Note 5)		
6. Profession	(See Note 6)		
7. Dividends from companies . .	(See Note 7)		
8. Interest on mortgages, loans, fixed deposits, current accounts, etc., not being income from business			
9. Ground rent			
10. Any source other than those mentioned above including any income earned in partnership with others	(See Note 8)		
Total .			

Part II.

Statement of total income, profits and gains in the previous year, arising, accruing or received out of British India, which if arising, accruing or received in British India, would be included in the computation of total income under section 16.

* Name of Country	Sources of income		Amount of profits or gains or income during the previous year
			Rs
	1 Salaries *	(See Note 10)	
	2 Securities *	(See Note 11)	
	3 Property *	(See Note 12)	
	4 Business *	(See Note 13)	
	5 Profession *	(See Note 14)	
	6 Dividends from companies *	(See Note 15)	
	7 Interest on securities other than in item 2 above, mortgages, loans, fixed deposits, current accounts, etc, not being income from business *	(See Note 16)	
	8 Ground rent *		
	9 Any source other than those mentioned above including any income earned in partnership with others	(See Note 17)	
		Total	
	Total as per Part I Total as per Part II Grand total		

*The figures for each country should be separately shown

Verification.

I declare that to the best of my knowledge and belief the information given in the above statement is correct and complete, that the amounts of income shown are truly stated and relate to the year ended   and that no other income accrued or arose or was received by me/the firm during the said year and that I/the firm have no other sources of income.

Signature.

Dated   *19* .

N.B.—(a) Income accruing to you outside British India received in British India should be entered in Part I and not in Part II.

(b) All income from whatever source derived must be entered in the form including income received by you as a partner of a firm.

(c) "Previous year" means the twelve months ending on the 31st day of March next preceding the year for which the assessment is to be made, or, if the accounts of the assessee have been made up to a date within the said 12 months in respect of a year ending on any date other than the said 31st day of March, then at the option of the assessee the year ending on the day to which his accounts have been made up.

NOTE 1.—In column 2 should be shown the gross amount of salary and not the net amount after deductions on account of income-tax, provident fund, etc.

NOTE 2.—"Interest on securities" means the interest on promissory notes or bonds issued by the Government of India or a Local Government, or the interest on debentures or other securities for money issued by or on behalf of a local authority or company. Where income-tax has been deducted from the interest, or where the interest has been paid income-tax free, the amount of tax so deducted or paid should be added to the amount of interest actually received, and the gross amount so arrived at should be entered in column 2 of the statement. The term "interest on securities" does not include interest *on fixed deposits or mortgages or other loans*, which have to be shown under heading 8.

The interest on securities of the Government of India or of Local Governments declared to be income-tax free should be shown under head 3. Those which are not declared to be income-tax free should be included under this head.

Entries under this head must be supported by the certificate issued by the person or company paying the interest under section 18 (9) of the Act.

NOTE 3.—(*a*) The income-tax payable on the interest receivable on a security of a Local Government issued income-tax free is payable by the Local Government and not by the holder of the security.

(*b*) Only the *interest on security* of the *Government* of *India* or of a Local Government declared to be income-tax free should be entered against this head. Such interest will not be charged to income-tax but it must be included in the statement of total income in order to ascertain the rate of income-tax chargeable on other income. *It is chargeable to super-tax.*

(*c*) Particulars of any interest on securities issued by other authorities and stated to be free of income-tax should be entered against head 2, as income-tax on such interest is actually paid by these authorities on behalf of the recipients.

NOTE 4—The tax is payable under this head in respect of the *bonâ fide* annual value of any buildings or lands appurtenant thereto of which you are the owner other than such portions of such buildings and lands as you may occupy for the purpose of your business

SCHEDULE A

Serial number	Name of village or town where the property is situated	Name of street and number of property	In the case of municipalities the name of the person in whose name the property stands in the municipal registers	Whether the property is occupied by owner or is let	Annual letting value of the property	Period during which the property remained vacant	Amount of rent actually received for the property if let	Deductions: One sixth of the annual letting value shown in column 6	Deductions: Premium paid to insure the property against damage or destruction	Deductions: Interest paid on a mortgage or charge on the property	Deductions: Ground rent paid for the property	Deductions: Land revenue paid for the property	Deductions: Collection charges paid	Deductions: Amount claimed on account of property remaining vacant	Deductions: Total of columns 8 to 13 and 13 A	Net amount to be carried over to the front of the form
1	2	3	4	5	6	A	7			10	11	12	13	13 A	14	15

NOTE 5—(*a*) Where you keep your accounts on the mercantile accountancy or book profits system, you must file a return in the following form —

Income profits or gains from business trade, commerce

	Rs	As
Income profits or gains as per Profit and Loss Account for the year ended 19		
Add—Any amount debited in the accounts in respect of—		
1 Reserve for bad debts		
2 Sums carried to reserve for provident or other funds		
3 Expenditure of the nature of charity or presents		
4 Expenditure of the nature of capital		
5 Income tax or Super tax		
6 Drawings or salary of proprietor or partners		
7 Rental value of property owned and occupied		
8 Cost of additions to or alterations extensions improvements of any of the assets of the business		

Income, profits or gains from business, trade, commerce—contd.

	Rs.	As.
Add—Any amount debited in the accounts in respect of—		
9. Interest on the proprietor's or partner's capital, including interest on reserve or other fund		
10. Losses sustained in former years		
11. Losses recoverable under an insurance or contract of indemnity		
12. Depreciation of any of the assets of the business . . .		
13. Private or personal expenses and expenses not incurred solely for the purpose of earning the profits . .		
TOTAL .		
Deduct Any receipts included in the account already charged to Indian Income-tax and the interest on securities of the Government of India or of Local Governments declared to be Income-tax free.		
Balance .		

(Signature of the person making the return.)

Dated 193 .

(b) When you do not keep your accounts in such a form, you must file a statement showing how you arrive at the taxable profits, *i.e.*, showing details of the gross receipts and of the expenditure you propose to set against those receipts. No deductions are permissible on account of—

(i) Property owned and occupied by the owner of a business for the purposes of a business;

(ii) Additions to, or alterations, extensions, or improvements of, any of the assets of the business;

(iii) Interest on the capital of the proprietors or partners of the business;

(iv) Bad debts not actually written off in the accounts;

(v) Losses sustained in previous years;

(vi) Reserves of any kind;

(vii) Sums paid on account of the income-tax or super-tax or any tax levied by a local authority other than local rates or municipal taxes in respect of the portion of the premises used for the purpose of the business;

(viii) Any expenditure of the nature of charity or a present;

(ix) Any expenditure of the nature of capital;

(x) Any loss recoverable under an insurance or a contract of indemnity;

(xi) Depreciation of any kind other than that specified in the Act;

(xii) Drawings or salaries of the proprietors or the partners;

(xiii) Private or personal expenses of the assessee;

(xiv) Any expenditure of any kind which is not incurred solely for the purpose of earning the profits.

If you have included any such sums in your expenditure in your books, you must exclude them from the expenditure permissible for the purpose of arriving at your taxable profits

(c) You are also required to attach a statement showing the sums charged in your accounts under the provisions of section 58 K (2)

NOTE 6—The income, profits or gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of such profession or vocation, provided that no allowance is made on account of any of your personal expenses Professional fees received by you in any part of India (whether within British India or not) must be included by you in your receipts

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NOTE 7—Income tax chargeable on the profits of companies is paid by the companies, so that the dividends received by shareholders represents the net amount remaining after any income tax due by the company has been paid This amount should be entered in column 2 of the statement The proportionate tax will be added in the Income tax office

If the rate of tax applicable to your total income is less than the rate of income tax applicable to the profits or gains of the company at the time of the declaration of such dividends, you may, by attaching the company's certificate received with the dividends, have the excess collected on your dividends from the company set against the tax payable by you on your other income instead of having to apply separately for a refund

Where a company derives a part of its profits in British India and part outside British India such portion of its dividend as is payable out of profits taxable in British India should be shown in Part I under item 7 and the balance in Part II under item 6

NOTE 8—Agricultural income from land not paying land revenue or local rates to an authority in British India should be included under this head or under income from business according to circumstances

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NOTE 9—Rebates in respect of insurance premia or of a contract for annuity cannot be allowed in connection with a claim for refund under section 48 A separate claim should be made either for their allowance in the course of assessment or in cases where no assessment has been made for a refund under section 48 A

NOTE 10—Under this head should be shown interest on securities issued by deductions on account of income tax, should be shown

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NOTE 11—Under this head should be shown interest on securities issued by the Government of India or a Local Government or a local authority in India on which interest is paid or payable outside British India and the interest on debentures of companies operating in India paid or payable outside British India For this purpose Company means a company as defined in the Indian Companies Act, 1913 or formed in pursuance of an Act of Parliament or of Royal Charter or Letters Patent or of an Act of the Legislature of a British possession and includes any foreign association carrying on business in British India whether incorporated or not, and whether its principal place of business is situate in British India or not, which the Central Board of Revenue may, by general or speical order, declare to be a company for the purposes of this Act Interest on all other securities should be shown under item 7—see Note 16 Interest should be shown gross if foreign tax is deducted therefrom after the assessee receives the interest, if the tax is deducted at source, the net interest received should be shown

NOTE 12.—See instructions in Note 4.

NOTE 13.—The details should be given as explained in Note 5, but there will be no "deduct" entry on account of profits included in the amount already charged to Indian income-tax and the interest on securities of the Government of India or a Local Government in India declared to be income-tax free.

NOTE 14—This should show professional fees received outside British India.

NOTE 15.—The figure to be shown here is the amount actually received by the shareholder irrespective of whether the dividends are declared free of tax or not.

Where a company derives a part of its profits in British India and part outside British India, such portion of its dividend as is payable out of profits taxable in British India should be shown in Part I under item 7 and the balance in Part II under item 6.

NOTE 16.—This head will include *inter alia* interest on all securities other than those entered in item 2, see Note 11. Interest should be shown gross if foreign tax is deducted therefrom after the assessee receives the interest; if the tax is deducted at source, the net interest received should be shown.

NOTE 17.—Agricultural income from land and not included in Part I should be shown under this head.

116. 38. Where the application under rule 36 or rule 36-A is made in respect of interest on securities or dividends from companies, the application shall be accompanied by the certificate prescribed under section 18 (*9*) or section 20, as the case may be.

116. 39. The application under rule 36 or rule 36-A shall be made as follows :—

(*a*) If the applicant is resident in British India, to the Income-tax Officer of the District in which the applicant is chargeable directly to income-tax, or if he is not chargeable directly to the Income-tax Officer of the district in which he ordinarily resides;

(*b*) If the applicant is resident outside British India, to the Income-tax Officer appointed by the Central Board of Revenue.

39-A. An application under section 48-A shall be made as follows :—

(*a*) If the applicant is resident in British India, to the Income-tax Officer of the district in which

the applicant is chargeable directly to income-tax, or, if he is not chargeable directly, to the Income tax officer of the district in which he ordinarily resides,

(b) if the applicant is resident outside British India, to the Income-tax Officer appointed by the Central Board of Revenue

40 An application for refund of income tax under section 49 of the Act shall be made in the following form — **P. 120.**

Application for relief from double income tax under section 49 of the Indian Income tax Act, 1922

I, of , do hereby state that I have paid United Kingdom income tax and super tax amounting to £ for the year ending 19 on an income of £ and that Indian income-tax/income-tax and super tax of Rs has also been paid on the same income/income from the same source amounting to Rs I have obtained relief under the provisions of section 27 of the English Finance Act, 1920, at the rate of see attached certificate from the Inspector of Taxes I now pray for a further relief at the rate of amounting to Rs under section 49 of the Indian Income tax Act, 1922, to which I am entitled My income from all sources to which this Act applies during the "previous year" ending on the 19 , amounted to Rs only—see Return of income attached/already submitted

Signature

I hereby declare that what is stated herein is correct

Signature

Dated *19*

41 The application under rule 36 or rule 40 may be presented by the applicant in person or through a duly authorized agent or may be sent by post

42 A return shall be furnished by the principal officer of a Company under section 19 A in respect of a dividend or aggregate dividends if the amount thereof exceeds Rs 5,000

42-A. A return shall be furnished by the person responsible for paying interest not being interest on securities in respect of amounts of interest or aggregate interest exceeding Rs. 1,000.

43. The return by the principal officer of a Company under section 19-A shall be in the following form and shall be delivered to the Income-tax Officer who assesses the company :—

Return under section 19-A of the Indian Income-tax Act, 1922, for the year 1st April 19 31st March 19 .

Name of Company

Address of Company

(1) Resident Shareholders/Non-Resident Shareholders.

Serial number.	Name of shareholder.	Address of shareholder.	Date of declaration of dividends.	(2) Amount of dividends.	
				Net.	Gross.
1	2	3	4	5	6
				Rs.	Rs.

I, , the principal officer of the Company, hereby certify that the above statement contains a complete list of the resident/non-resident shareholders of the Company to whom a dividend or aggregate dividends exceeding Rs. 5,000 was or were distributed in the period from the 1st April 19 to the 31st March 19 .

Signature.

Dated 19 .

NOTE 1.—Separate forms should be used for resident and non-resident shareholders.

NOTE 2.—Where dividends are issued "free of income-tax", the figure to be entered in column 5 is the sum actually paid, and the figure to be entered in column 6 is the aggregate of the sum so paid and the amount of income-tax payable by the Company in respect of the dividends.

43-A The return under section 20 A shall be in the following form and shall be delivered to the Income tax Officer in whose jurisdiction the person responsible for paying interest resides — ,

Return under section 20-A of the Indian Income-tax Act, 1922, for the year 1st April 19 to 31st March 19

Name of payer

Address of payer

Serial No	Name of payee	Address of payee	Date of payment	Amount of interest or aggregate interest

I hereby certify that the above statement contains a complete list of persons to whom interest or aggregate interest exceeding Rs 1,000 was paid during the period 1st April 19 to 31st March 19

Signature

Dated *19*

44 Omitted

FINANCE DEPARTMENT (CENTRAL REVENUES).

Notification No. 9, dated the 15th March, 1930.

In exercise of the powers conferred by Chapter IX-A of the Indian Income-tax Act, 1922 (XI of 1922), the Governor General in Council is pleased to make the following rules, the same having been previously published as required by sub-section (*1*) of section 58-L read with sub-section (*4*) of section 59 of the said Act:—

1. These rules may be called the Indian Income-tax (Provident Funds Relief) Rules.

2. In these rules, "section" means a section of the Indian Income-tax Act, 1922 (XI of 1922).

3. The contributions made by employees after the date of recognition of a provident fund and the interest on the accumulated balances of such contributions shall be wholly invested in securities of the nature specified in clause (*a*), (*b*), (*c*), (*d*) or (*e*) of section 20 of the Indian Trusts Act, 1882, and payable both in respect of capital and of interest in British India.

4. (*1*) Withdrawals by employees shall not be allowed by the trustees except on special grounds in the following circumstances or circumstances of a similar nature—

(*a*) to pay expenses incurred in connection with the illness of a subscriber or a member of his family;

(*b*) to pay for the passage over the sea of a subscriber or any member of his family;

(*c*) to pay expenses in connection with marriages, funerals or ceremonies which by the religion of the subscriber it is incumbent upon him to perform and in connection with which it is obligatory that expenditure should be incurred;

(*d*) to meet the expenditure on building or purchasing a house or a site for a house provided that such house or site is assigned to the trustees of the fund;

(*e*) to pay premia on policies of insurance on the life of the subscriber or of his wife provided that the policy is assigned to the trustees of the fund and that the receipts granted by the insurance company for the premia are from time to time handed over to the trustees for inspection by the Income tax Officer

(*2*) For the purposes of sub rule (*1*) ' Family'' means any of the following persons who reside with and are wholly dependent on the employee, namely —the employee's wife, legitimate children, step children, parents, sisters and minor brothers

(*3*) No such withdrawal shall exceed (1) the pay of the employee for three months, or, in the case of a withdrawal for the purpose specified in clause (*d*) of sub rule (*1*) six months at the time when the advance is granted, or (2) the total of the accumulation of exempted contributions and exempted interest contained in the balance to the credit of the employee whichever is less

(*4*) A second withdrawal shall not be permitted until the sum first withdrawn has been fully repaid

5 (*1*) Where a withdrawal is allowed for a purpose specified in clause (*d*) or clause (*e*) of sub-rule (*1*) of rule 4 the amount withdrawn need not be repaid

(*2*) Where a withdrawal is allowed for any other purpose the amount withdrawn shall be repaid in not more than twenty four equal monthly instalments and shall bear interest in accordance with rule 6 and no further withdrawal shall be permitted until repayment has been effected in full

6 In respect of withdrawals which are repaid in not more than 12 monthly instalments, an additional instalment of 4 per cent of the amount withdrawn shall be paid on account of interest; and in respect of withdrawals which are repaid in more than 12 monthly instalments two such instalments of 4 per cent of the amount withdrawn shall be paid on account of interest·

Provided, however, that at the discretion of the Trustees of the Fund, interest may be recovered on the

amount withdrawn or the balance thereof outstanding from time to time at 1 per cent. above the rate which is payable for the time being on the balance in the fund at the credit of the member.

7. The employer shall deduct such instalments from the employee's salary, and pay them to the Trustees. The deductions shall commence from the second monthly payment made after the withdrawal or in the case of an employee on leave without pay from the second monthly payment made after his return to duty.

8. In case of default of repayment of instalments under rules 6 and 7, the Commissioner of Income-tax may at his discretion order that the amount of the withdrawal or the amount outstanding shall be added to the total income of the employee for the year in which the default occurs and the Income-tax Officer shall assess the employee accordingly.

9. Notwithstanding anything contained in rules 4 to 8, it shall be open to the trustees of a recognised provident fund to permit the withdrawal of ninety per cent. of the amount standing at the credit of an employee if the employee takes leave preparatory to retirement, provided that if he rejoins duty on the expiry of his leave he shall refund the amount drawn together with interest at the rate allowed by the fund.

9-A. Where the accounts of a recognised provident fund are kept outside British India, certified copies of the accounts shall be supplied not later than the 15th June in each year to a local representative of the employer in British India :

Provided that the Income-tax Officer may in any year appoint a date later than the 15th June as the date by which the certified copies shall be supplied.

10. (*1*) An application for recognition shall be made by the employer maintaining the fund for which recognition is sought and shall be accompanied by the following documents :—

(*a*) the trust deed if any in original with one copy thereof, the latter to be retained by the Commissioner, and

(*b*) the rules of the fund.

Provided that if the original of the trust deed cannot conveniently be produced, it shall be open to the Commissioner of Income-tax to accept in lieu of the original a copy certified either by a Magistrate or in any manner specified in rule 7 of the Indian Companies Rules, 1914, in which case an additional copy shall be furnished for retention by the Commissioner

(*2*) The application shall be submitted through the Income tax Officer of the area in which the accounts of the funds are kept, or, if the accounts are kept outside India, through the Income-tax Officer of the area in which the local headquarters of the employer are situate

(*3*) The application shall contain the following information —

(*a*) Name of employer and address, his business, profession, etc , also his principal place of business

(*b*) Number of employees subscribing to the fund—

(*i*) in British India,

(*ii*) in Indian States,

(*iii*) outside India

(*c*) Place where the accounts of the fund are or will be maintained

(*d*) If the fund is already in existence—

(*i*) a copy of the last balance sheet of the fund, where such is maintained,

(*ii*) details of investments of the fund

(*4*) A verification in the following form shall be annexed to the application —

FORM OF VERIFICATION

We/I, the trustee(s) of the abovenamed fund, do declare that what is stated in the above application is true to the best of our information and belief, and that the documents sent herewith are the originals or true copies thereof

11. Where an employee of a company owns shares in the company with a voting power exceeding ten per cent. of the whole of such power the sum of the exempted contributions of the employee and employer to the recognised provident fund maintained by the company shall not exceed Rs. 250 in any month.

12. If an employee assigns or creates a charge upon his beneficial interest in a recognised provident fund, the Income-tax Officer shall, on the fact of the assignment or charge coming to his knowledge, give notice to the employee that if he does not secure the cancellation of the assignment or charge within two months of the date of receipt of the notice the consideration received for such assignment or charge shall be deemed to be income received by him in the year in which the fact became known to the Income-tax Officer and shall be assessed accordingly.

13. If the Commissioner withdraws recognition from a recognised provident fund, the balance to the credit of each employee at the end of the financial year prior to the date of the withdrawal of recognition shall be paid to him free of income-tax and super-tax at the time when such employee receives the accumulated balance due to him. The remainder of the accumulated balance due to him shall be liable to income-tax and super-tax as if the fund had never been recognised.

14. Before withdrawing recognition, the Commissioner of Income-tax shall give an opportunity to the employer and the trustees of the fund to show cause why recognition should not be withdrawn.

FINANCE DEPARTMENT (CENTRAL REVENUES).

Notification No. 10, dated the 15th March, 1930.

In pursuance of sub-section (*2*) of section 58-F of the Indian Income-tax Act, 1922 (XI of 1922), the Governor General in Council is pleased to fix six per cent. as the rate referred to in the said sub-section.

CENTRAL BOARD OF REVENUE.

Notification No. 12, dated the 15th March, 1930.

In exercise of the powers conferred by Chapter IX-A and by section 59 of the Indian Income-tax Act, 1922 (XI of 1922), the Central Board of Revenue is pleased to make the following rules, the same having been previously published as required by sub-section (*1*) of section 58-L read with sub-section (*4*) of section 59 of the said Act —

1. These rules may be called the Indian Income-tax (Provident Funds Relief) (Central Board of Revenue) Rules

2. In these rules "section" means a section of the Indian Income-tax Act, 1922 (XI of 1922)

3 An order according recognition to a provident fund shall take effect—

(*a*) in cases where the application for recognition has been received by the Commission of Income-tax before the 31st May 1930—on 31st May 1930,

(*b*) in other cases—on the last day of the month in which the order is made, or, at the request of the employer, on the last day of any later month in the same financial year

4. An appeal under sub-section (*5*) of section 58-B shall be in the following form and shall be verified in the manner indicated therein —

Form of appeal against non-recognition of a Provident Fund by a Commissioner of Income-tax

To

The Central Board of Revenue.

The petition of employer(s) carrying on business, profession or at

Your petitioner(s) applied to the Commissioner of Income-tax under section 58-B of the Indian Income-tax

Act, 1922, for the recognition of the provident fund maintained by them (him) for the benefit of their (his) employees. The Commissioner of Income-tax has refused recognition for the reasons stated in his order dated of which a copy is attached.

For the reasons set out below your petitioner(s) submit(s) that the fund should be recognised; and pray(s) that the Central Board of Revenue may be pleased to accord recognition.

GROUNDS OF APPEAL.

We/I the petitioner(s) named in the above petition do declare that what is stated therein is true to the best of our/my information and belief.

Signature

Address of Appellant.

Date

5. The accounts of a recognised provident fund shall be prepared at intervals of not more than twelve months.

6. An account shall be maintained for each subscriber to the fund in the following form :—

Name   Date of joining Fund

date ______
Paid to employee ______
Lapsed to employee or to fund ______
Recovery by employer ______

Year and month	Salary	Contributions and Interest						Total contributions Columns 3 5 and 7	Total Interest Columns 4 6 and 8	Exempt		Not Exempt		Additions to total income (5 7 and 10)	Remarks
		Contributions by employee	Interest on sums in column 3	Regular contributions by employer	Interest on sums in column 5	Employer s contributions of a contingent nature	Interest on sums in column 7			Contr but ons not exceeding 1 6th of s la y for the year	Inte est on sums in column 11 at % p a	Cont ibut ons Column 9 minus column 11	Interest Column 10 minus column 12		
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
BALANCE B F April May March															
Adjustment on account of temporary wit drawals account (Columns 11 and 12 only) Adjustme t on account of non repayable with d awals account (Columns 11 12 13 & 14)	Total Total carried over	and 4		5 and 6		7 and 8				11 and 12					

N.B --The totals of columns 3 and 4 5 and 6 7 and 8 and 11 and 12 will be carried into the next year as the opening balance of columns 3 5 7 and 11 respectively

NON REPAYABLE WITHDRAWALS ACCOUNT

	Amount.
April May June July March	
Total	

TEMPORARY WITHDRAWALS ACCOUNT

	Advance	Repayment	Interest
Balance brought forward— April May June July March			
		Balance carried over	

7. An abstract for the financial year or other applicable accounting period of the individual account of each employee participating in a recognised provident fund shall be furnished by the trustees to the Income-tax Officer of the area in which the employer conducts his business, profession or vocations, or to such other Income-tax Officer as the Commissioner may, in each case, direct, not later than the fifteenth day of June in each year. It shall be in the form prescribed in rule 6, but shall show only the totals of the various columns thereof for the financial year or other accounting period. It shall also give an account of any temporary withdrawals by the employee during the year and of the repayment thereof.

8. The account to be made under the provisions of sub-section (*1*) of section 58-J shall show in respect of each employee (*i*) the total salary paid to the employee during the period of his participation in the provident fund, (*ii*) the total contributions, (*iii*) the total interest which has accrued thereon, and (*iv*) so far as may be, the percentage of the employee's salary in accordance with which contributions have been made by the employer and employee.

CENTRAL BOARD OF REVENUE.

Notification No. 35, dated the 12th July 1930.

In exercise of the powers conferred by sub-section (7) of section 33-A of the Indian Income-tax Act, 1922 (XI of 1922), the Central Board of Revenue makes the following rules :—

RULES.

(*1*) The Commissioner of Income-tax on receipt of an appeal under section 33-A of the Indian Income-tax Act, 1922, shall, unless, in pursuance of the proviso to sub-section (*3*) of that section, the appeal is withdrawn, appoint a Board of Referees consisting of not less than three and not more than five members chosen by him, subject to the provisions of sub-section (*6*) of that section, from a panel constituted and maintained by the Central Board of Revenue.

(*2*) Appointments to, and resignations or removals from, the panel shall be published in the Gazette of India.

(3) The names of the members chosen by the Commissioner shall be communicated to the appellant within one week of receipt of the appeal in the Commissioner's office or of the decision of the Commissioner under section 33, as the case may be

(4) Within a period of 15 days from the receipt of the communication, the appellant may object, without giving any reasons, to the inclusion of any name or names in the Board, and submit the names of not less than five members of the panel to whom he will not object

(5) In the event of an objection to any name, the Commissioner shall substitute a fresh name therefor, but shall not be bound to accept a name submitted by the appellant, and shall communicate it forthwith to the appellant

(6) The appellant may not subsequently object to the inclusion in the Board of any name submitted by himself

(7) The appellant shall be allowed one further period of fifteen days in which to object to names not originally included by the Commissioner nor submitted by himself

(8) If the appellant has twice objected to the constitution of the Board proposed by the Commissioner, the Central Board of Revenue shall settle the composition of the Board and the decision of the Central Board of Revenue shall be final

(9) The time and place of the first meeting of the Board shall be fixed by the Commissioner after consulting the members The time and place of subsequent meetings shall be fixed by the Board and announced to the appellant and the Commissioner

(10) The members of the Board shall elect their own Chairman

(11) The decision of the Board shall be the decision of the majority of members present All the members present shall sign the report and any member who differs from the others may record a dissenting minute Should there be an equality of votes the Chairman shall have a casting vote No decision of the Board which is signed by less than half the members shall be valid The proceedings of the Board shall not be invalidated merely by reason of the absence of a member or his failure to sign the report of the Board

PART III.

NOTES AND INSTRUCTIONS REGARDING THE INCOME-TAX LAW AND RULES.

NOTES AND INSTRUCTIONS REGARDING THE INCOME-TAX LAW AND RULES

1 *Extent of the Act* [*Section 1 (2)*]—(i) This sub section governs the whole of the Act and defines the areas to which the Act applies Section 7 (*2*) on the other hand governs merely the taxation of particular classes of income

(ii) The words "and to all other servants of His Majesty in those dominions' were added in the Act of 1918 as it was considered advisable to abandon the previous limitation, in the case of persons serving outside British India of liability to British subjects, since it not infrequently happens that subjects of Indian States are taken into Government employment and sent to serve in places outside British India

(iii) The words including British Baluchistan' were inserted in the Act of 1922 Prior to the passing of that Act, the Income-tax Act was applied to British Baluchistan by notification in a restricted form income tax being under the notification, leviable only upon salaries received by persons in the service of, and paid by or on behalf of, Government or of a local authority established in the exercise of the powers of the Central Government The Act now applies in full force to the whole of British Baluchistan

(iv) The whole of the Act, with the exception of sections 7 (*2*) and 64, has been applied to the Civil and Military Station, Bangalore and the District of Abu, while to Berar the whole Act except section 7 (2) has been applied Only so much of the Act has been applied to the Cantonment of Baroda, the British administered areas in Central India and the British administered areas (excluding Railway lands) in the Bombay Presidency, as relates to the assessment and collection of [illegible] of Government servants or of *local* [illegible] in the exercise of the powers of the Central Government

(v) The Civil and Military Station of [illegible] Berar and the District of Abu are distinct from British India and, strictly speaking, all profits accruing or arising or [illegible] British India or deemed to accrue or arise or [illegible] British India are liable to tax even if they have already been taxed in those areas Similarly, all profits accruing or arising or [illegible] in any of those areas or deemed to [illegible] ed in those areas are liable to [illegible] already been taxed in British India Berar is [illegible] as part of British India for purposes of [illegible] of double taxation arises When the [illegible] India and in the Civil and [illegible] duction or refund is [illegible] tax [illegible] on such profits in the Civil and [illegible] if the headquarters of the firm or [illegible]

similar refund or deduction is given at Bangalore if the headquarters of the firm or company are at Bangalore. The whole of the Act has also been applied to Angul, but under a notification issued under section 60 of the Act, the income of persons in that District other than persons in the service of Government has been exempted from liability to the tax—see paragraph 17 *(34)*.

Under the sub-section—

(a) the Act applies in Indian States to all persons in the service of Government, whatever their nationality. It applies in Indian States to persons in the service of a local authority established in the exercise of the powers of the Central Government, only if they are British subjects or servants of Government lent to the local authority.

(b) the salaries of Government officers serving outside India are not liable to income-tax unless they are drawn or otherwise received in India.

(c) Frontier Agency tracts and ceded areas are included in the term "dominions of Princes and Chiefs in India in alliance with His Majesty".

2. *Definition of "agricultural income".* *[Section 2 (1).]*—(i) Agricultural income is exempted from tax under the provisions of section 4 (3) *(viii)* of the Act and any income to be exempted must fall within the words of this definition. The definition was amended in the Act of 1922 in order to make it clear that rent or revenue derived from land used for agricultural purposes [clause *(a)*] is exempt from tax only in cases where the land is assessed to land revenue by an authority in British India or is subject to a local rate assessed and collected by an authority in British India, and that the exemption does not apply to cases where the land pays revenues or local rate to authorities outside British India. Clauses *(b)* and *(c)* were also amended at the same time in order to make it clear that the limitations in clause *(a)* apply also to the incomes specified in clauses (*b*) and (*c*), so that income derived from agriculture will only be exempt if the agriculture is in respect of land on which land revenue or local rate is paid to an authority in British India.

(ii) A further amendment was also made by the Act of 1922 in clause *(b) (iii)*. Under the previous Acts profits from the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him were included under "agricultural income" only in cases where the cultivator or receiver of rent-in-kind did not keep a shop or stall for the sale of such produce. Under the present Act profits derived by a cultivator from the sale of the produce raised by him are included in the term "agricultural income" where the produce is sold in its raw state, that is, if no process has been performed in respect of the produce other than a process of the nature described in sub-clause *(ii)*. The tax therefore is now not leviable on the profits derived by a cultivator or

receiver of rent in kind from the sale of the *raw* produce raised or received by him even if he keeps a shop for the retail vend of such raw produce

(*iii*) If a land owner grows on his own land which is assessed to land revenue forests or trees and derives income therefrom he is not liable to income tax on such income Persons however who take contracts in forests for the cutting down and selling of timber are liable to tax on the profits from such transactions

(*iv*) Assignment of land revenue to a Jagirdar is not assessable to income tax in the hands of the Jagirdar

(*v*) Interest on arrears of rent of land used for agricultural purposes is part of the rent derived from the land and is therefor not liable to income tax subject to the exception that if the arrears are secured by a bond and are *therefore recoverable by civil* suit such interest is taxable

(*vi*) Rule 23 prescribes the manner in which profits and gain shall be arrived at in the case of incomes derived in part from agriculture and in part from business and provides for the separation of industrial from agricultural profits in cases where the agricultural *raw* produce is worked up for the market Assessing authorities should determine what portion of profits derived in part from industry and in part from agriculture should be regarded *as derived from industry and agriculture respectively taking into* account the circumstances of each case

(*vii*) In the case of tea where the person growing manufacturing and selling tea has separate purely agricultural income (*e g* from rent or cultivation of land on which tea is not grown) no account shall be taken of such income in calculating the profits liable to tax Some concerns again are engaged in the growing of tea seed Where the tea seed is produced for the use of the assessee it must of course be included in the profits No tax should however be levied on the profits derived from the growing of tea seed in cases where the tea seed is sold to a third party and where separate accounts are maintained for the expenditure and receipts for the growing of the seed Although under section 10 (2) (*ix*) of the Act the only expenditure that can be allowed to be set against profits is expenditure incurred solely for the purpose of earning the profits or gains taxable in any year it will only be fair in the case of tea concerns to allow as a charge against profits the whole of the cost of the upkeep (*e g* weeding and draining) of extensions of the estate which are not in bearing No allowance can be made on account of any capital expenditure in connection with such extensions such as the acquisition clearing and draining of the land the making of roads or the erection of buildings before the cultivation begins but when once the cultivation has begun with the completion of the planting the annual cost of the upkeep of such extensions should be allowed as a business expense even although the expense is not in bearing As

regards the question as to what is capital or revenue expenditure in respect of tea gardens see paragraph 64.

vii(*a*) Under section 15 of the Indian Tea Control Act, 1933, the owner of a tea estate may transfer his right to obtain export licences in whole or in part to any party. The profits resulting from the sales of such export and production quotas and, on the other hand, the expenditure incurred by the transferee in purchasing such quotas should be treated as follows for the purpose of the assessment of income-tax with reference to Rule 24 of the Indian Income-tax Rules, 1922. Where the quotas are transferred by the owner of a tea estate to which they appertain, the price realised should be treated as if it were income derived from the sale of tea grown and manufactured by the seller, since the allocation of the quota has resulted from the growth and sale of tea by the seller in previous years. In that case, therefore, only 40 per cent. of the income derived from the sale of the rights will be held liable to tax. Where, however, a further transfer is made by a person other than the owner of the tea estate to which the quota has been so allotted, whether or not such person is himself the owner of a tea estate to which another quota has been allotted, his profits on that transaction cannot in any sense be said to have resulted from the growth by him of tea and will have to be treated as wholly taxable in the assessment of the seller. The same applies to the profits made by an owner of a tea estate out of a transaction in which he buys a quota and uses it for the export of tea grown in an estate not his own (*e.g.*, after manufacturing tea in his factory from green tea grown elsewhere). If a quota is purchased by the owner of another tea estate and is utilized by him for the exportation of tea grown on his own estate, such purchase enables the purchaser to market the product of his own tea estate, and it follows that the cost of buying the quota will have to be debited to the income of the concern before apportionment under Rule 24 of the Indian Income-tax Rules. Where the quota is purchased by a person who is not the owner of a tea estate, or if purchased by the owner of a tea estate is resold by him, or is used by him for the export of tea grown on an estate not his own, the expenditure will be allowed in full in computing the purchaser's profits, since, as already explained, the net profits of such a person from the transaction are taxable in full and are not covered by Rule 24 of the Indian Income-tax Rules.

(*viii*) The following principle should be adopted in calculating the net dividends and regulating refunds on dividends, paid from profits that are only partly taxed in the hands of the company, *e.g.*, companies a part of whose income arises or accrues outside British India and is not received in British India or part of whose income is derived from tax-free securities :—

If x per cent. of the profits pay tax in the hands of the company, the gross dividend is to be calculated

(taking company rate of income-tax as 2 annas and 4 1/6 pies, or 169/1152) by applying to the net dividend the fraction $\frac{1152}{1152 - 169 \times \frac{x}{100}}$

(*ix*) Illegal *abwabs* are taxable since they do not come within the definition of "agricultural income" So also are the following items, *viz* —(*a*) fees received from land used for storing purchase of crops (*Paiali*), (*b*) *punyaha nazar* or *nazar* paid by tenants of agricultural holdings at the beginning of the *zemindari* year, (*c*) *nazar* for petitions presented to the *zemindars* dealing with questions of successions, settlement and partition [Raja Probhat Chandra Barua *versus* King Emperor, High Court of Bengal Reference No 1 of 1926 (II, Srinivasan Tax Cases, page 392) and Privy Council Appeal in the same case] On the other hand, the ruling in the Bengal High Court Case No 40 of 1920, Birendra Kishor Manikya *versus* Secretary of State for India (I, Srinivasan Tax Cases, page 67), in which it was held that though the premium paid for the settlement of waste lands or abandoned holdings might reasonably be regarded as "rent or revenue" derived from land, as used in this definition, the same considerations did not apply to the *salami* or premium paid to a land holder for recognition of a transfer of a holding from one tenant to another, has been overruled, in respect of the *salami* in question, by a Full Bench of the High Court of Bengal in Reference No 1 of 1925, Nawabzadi Mehar Bano Khanum *versus* Commissioner of Income tax, Bengal (II, Srinivasan Tax Cases, page 99), this Full Bench decision was followed by the Patna High Court in Case No 47 of 1926, Maharajadhiraj of Darbanga *versus* Commissioner of Income tax B & O, (III, Srinivasan Tax Cases, page 158) and again maintained (by way of *obiter dictum*) in the High Court's subsidiary decision in the Reference case already quoted of Raja Probhat Chandra Barua

(*x*) The main judgment in the Reference (which was upheld by the Privy Council) dealt, not with the question of what is exempt *under the Act* as agricultural income but with the question whether non-agricultural income from permanently settled land is exempt *under the Settlement*, and answered that question in the negative

(*xi*) Again in the Patna High Court Case No 74 of 1919, in the matter of Bhikanpur Sugar Concern (I, Srinivasan Tax Cases, page 29) and in the Bengal High Court Case No 83 of 1920, Killing Valley Tea Company, Limited *versus* Secretary of State for India (I, Srinivasan Tax Cases, page 54), it has been held that the profits of sugar factories and profits derived from the manufacture of tea as a marketable commodity from the green leaves are liable to assessment

3 *Definition of "assessee"* [*Section* 2 (2)]—(*i*) "Assessee" is defined to mean a person by whom income-tax is payable Income tax includes super-tax which is defined in section 55 to

be "an additional duty of income-tax." Under section 3 (*39*) of the General Clauses Act, the word "person" includes any company or association or body of individuals whether incorporated or not. The executor, administrator or other legal representative of a deceased person is treated for the purposes of an assessment on the income of such deceased person, as an assessee.

(*ii*) The charging sections (sections 3 and 55) lay down who the persons and associations are who are liable to income-tax and super-tax. Income-tax is payable under section 3 by every individual, Hindu undivided family, company, firm and other association of individuals, and super-tax under section 55 is payable by every individual, Hindu undivided family, company, unregistered firm or other association of individuals not being a registered firm. While both income-tax and super-tax, therefore are payable by every individual, Hindu undivided family, company and other association of individuals not being a firm, there is a distinction in the case of firms. All firms whether registered or unregistered (see paragraph 10) are liable to pay income-tax but while unregistered firms are liable to pay super-tax, registered firms are not. The income of registered firms is liable to super-tax in the hands of the individual partners of the registered firm. Co-operative Societies, Clubs (not being companies) and Chambers of Commerce are examples of "association of individuals."

(*iii*) Private provident funds of companies and firms should not be assessed to income-tax as "other associations of individuals," otherwise than by deduction at the source upon their income from investments and should not be charged to super-tax at all. They are also eligible for refund of tax under Section 48 if they comply with the provisions of that section.

4. *Definition of "company".* [*Section 2* (*6*).]—This definition includes all companies constituted in the Dominions of the Crown, while the latter part of the definition is confined to such foreign associations as the Central Board of Revenue may desire to treat as companies for the purposes of the Act. The object of this latter part is to include associations such as the *French Societes Anonymes* which, though incorporate bodies, have many characteristics in common with the companies recognised by our law, if the Central Board of Revenue thinks that they should be treated as companies for the purposes of the Act.

5. *Trading operations of Indian States and Dominion Governments.*—Any trade or business in British India carried on by the Governments of Indian States or of any part of the British Empire, other than the Government of India or a Local Government, and the property occupied and goods owned in British India for the purpose of such business are, under the provisions of the Government Trading Taxation Act (III of 1926), liable to taxation under the Indian Income-tax Act in the same manner and

to the same extent as in a like case a company would be Before attempting to assess the income of such Government, the Income tax Officer should serve a notice under section 2 (12) (b) of the Indian Income tax Act upon some representative of the said Government in British India declaring his intention of treating such representative as the principal officer of such Government

6 *Definition of ' previous year''* [*Section 2 (11)*]—(i) Under section 3 of the Act, assessable income is to be computed with reference to a fixed period, which is known as the "previous year" This fixed accounting period, the income, profits and gains of which alone are taken into consideration in making an assessment is treated as isolated, without any consideration of what went before or what came after The definition of the phrase ' previous year'' in the Act of 1918 restricted the accounting period to a peroid of 12 calendar months The period of 12 calendar months was the period ending on the 31st day of March next preceding the year for which the assessment was to be made but the assessee was given an option of adopting a year of 12 calendar months ending on a date other than the 31st of March if that was the date up to which his accounts were made up This gave rise to difficulties in the case of certain communities, whose commercial year is not necessarily a calendar year, but is a period which, expressed in calendar months, varies from year to year, and in one year may be slightly over and in another slightly under 12 months Again, under the definition in the Act of 1918, any year which was adopted in place of the financial year had to terminate at some period within the previous financial year, and as there are numerous cases where the commercial year terminates in the month of April, the returns and accounts on which the assessment was based in such cases related to a period more than 12 months prior to the date of assessment While the definition of the phrase in the Act of 1918 has been repeated practically without alteration in clause (a) of this sub section, clause (b) is a new provision providing for the difficulties referred to above Under this clause the Central Board of Revenue or the Commissioner of Income tax in a province, if authorised by the Central Board of Revenue, may determine as the 'previous year'' a commercial year which may be slightly over or slightly under 12 months and which may terminate on a date subsequent to the end of the previous financial year The Central Board of Revenue has authorised the Commissioner of Income-tax in each province to determine as the "previous year" in the case of any person, business or company, or class of persons, business or company

(a) a commercial year which may consist of more or less than 12 months, provided that no commercial year which may extend to less than 11 or more than 13 calendar months in any one year shall be so determined, and

(b) a commercial year terminating after the end of the previous financial year, provided that no commercial year terminating later than one month after the end of the previous financial year, shall be so determined.

Where the Commissioner desires that a "previous year" should be recognised which does not come within his powers of sanction as stated above, he must obtain the orders of the Central Board of Revenue.

(ii) Income-tax Officers are, therefore, debarred from treating as a "previous year" any period which does not come within the definition in sub-clause (a) of clause (11) of Section 2 unless such "previous year" has been sanctioned either by the Income-tax Commissioner or the Central Board of Revenue.

(iii) Under the substantive part of sub-clause (a) of clause (11) of Section 2, an assessee has an absolute option to elect for the *first* time a "previous year" other than the financial year ending on the 31st day of March and in that case, the proviso to that sub-clause does not come into operation. The effect in such a case of the substantive part of the sub-clause in question will be to make the 'previous year', the year (*i.e.*, the 12 months) ending on the day to which the accounts have been made up, and Section 3 requires the assessment to be made on the income of the whole of that year.

(iv) Where, however, the assessee has already exercised his option under the substantive part of sub-clause (a) of clause (11) and is seeking to change his previous year for the second time, the proviso to the sub-clause in question comes into operation and it is open to the Income-tax Officer under the proviso to impose conditions involving an assessment otherwise than in accordance with the normal requirements of the Act. In such a case, the condition which the Income-tax Officer may have occasion to impose may be a condition that the assessment should be made on the income of a period exceeding 12 months. But should occasion arise to require assessment on the incomes of a period of less than 12 months, the imposition of a condition in this sense would equally be within the Income-tax Officer's competence.

(v) When the condition imposed under the above proviso means an assessment on the income of a period in excess of 12 months—say X months—the rate of tax to be applied to the aggregate income may be stipulated to be the rate applicable to a total income arrived at by applying the formula 12/X to the aggregate income. Even when X is less than 12 months, the above formula may be stipulated to be applied.

(vi) As regards super-tax, the condition imposed under the above proviso might require that it may be computed as follows: In the first place, the formula already mentioned, *viz.*, 12/X should

be applied to the income for the period under assessment On the resulting income, super-tax should be calculated in the ordinary way by allowing the usual deduction of Rs 30,000 or Rs 50,000 or Rs 75,000, as the case may be The total super-tax thus arrived at should then be multiplied by X/12 and the result will be the amount of super-tax leviable

(*vii*) As stated above, under the proviso to sub clause (*a*) of clause (11) of Section 2, an assessee who has, after the 31st March 1922, once exercised the option of selecting as his previous year" a year terminating on a date other than the 31st day of March within the previous financial year, cannot again exercise that option except with the consent of the Income-tax Officer, and upon such conditions as he may think fit, Income tax Officers in dealing with such cases and Commissioners in dealing with such cases, and Commissioners in dealing with cases under sub clause (*b*) of clause (11) of the above Section 2, should take steps to secure that the changing over from one previous year to another shall not result in any loss of revenue either because any loss of income profits or gains which but for the change in the accounting period, would not have come under assessment is by so doing, brought thereunder or otherwise The convenience of an assessee in this matter must be studied so far as possible, as it is desirable that the accounting period for income tax purposes should be the same as the accounting period according to which an assessee makes up his accounts for the purpose of his business, but in the actual year of change, conditions should be laid down sufficient to secure that the substitution of one year for another shall not result in any income, profits or gains of an assessee escaping assessment

(*viii*) If an assessee closes his accounts in different dates for different businesses or different sections of the same business or different sources of income, his income should be calculated separately for each business, section of business or source, according to the accounting year adopted for it and the aggregate of the incomes thus computed should be treated as the income of the previous year Each of the years of which the income is thus added together must of course, satisfy the definition of previous year' in section 2(11) of the Act with reference to the same year of assessment

(*ix*) If an assessee for some special reason closes his accounts on a particular occasion on a date different from—usually later than—that which he usually adopts, ordinarily proportionate profits of 12 months out of the (say) 14 or 15 months for which the accounts are closed should be taken for the current assessment, and the balance of profits for the remaining 2 or 3 months should be left over to be included in the next year's assessment In special cases, when the Income tax Officer has reason to believe that the temporary extension of the accounting period has been resorted to by the assessee with some ulterior motive, he may use

the discretion given to him by the proviso to section 13 of the Act.

(x) Where an Income-tax Officer grants permission to an assessee to change his accounting period, he should record the fact clearly in his assessment order, stating in detail the nature of the change permitted, and the conditions on which permission is granted.

7. *Definition of "Principal Officer".* [*Section 2 (12).*]—Income-tax Officers should treat as the "Principal Officer" of a local authority or company or other public body or association in the first instance the officials specified in clause (*a*); it is only in cases where the Income-tax Officer has no information regarding the persons who discharge the functions of the officers mentioned in clause (*a*) or where such persons cannot be found, that he should use the powers conferred by clause (*b*) of treating as the principal officer any other person connected with the company, public body or association.

8. *Meaning of the term "local authority".*—"Local authority", a phrase used in sections 2(*12*), 4(*3*) (*iii*), 7 and 21, is defined in section 3 (*28*) of the General Clauses Act, 1897, as

"a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with the control or management of, a municipal or local fund."

9. *Definition of "public servant"* [*Section 2 (13).*]—This definition is of importance for the purposes of section 54 of the Act. The definition of the phrase in the Indian Penal Code contains the following :—

"The words 'public servant' denote a person falling under any of the descriptions hereinafter following, namely :—

Ninth.—Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property on behalf of Government, or to make any survey, assessment or contract on behalf of Government, or to execute any revenue-process, or to investigate, or to report on any matter affecting the pecuniary interests of Government, or to make, authenticate or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government and every officer in the service or pay of Government or remunerated by fees or commission for the performance of any public duty;

Tenth.—Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district.

Explanation 1.—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2.—Wherever the words 'public servant' occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation."

10. *Registered and Unregistered Firms.* [*Sections 2(14) and (16), 14 (2) (b) and 26-A.*]—(*i*) Rules 2 to 6 prescribe the method of registering a firm. A firm to be registered must be constituted

under an instrument of partnership which definitely specifies the individual shares of the partners in the profits of the firm The deed of partnership to be registered both for purposes of assessment to income tax and super-tax is that in force in the year in which the assessment is made An application for registration may be made at any time before the assessment of the income of the firm is made but it is desirable that the application should accompany the return under section 22(*2*) of the Act If an application is made after the assessment of the firm, it should be returned to the person presenting it as out of time Even if such an application is accepted it can have no effect on the assessment for that year, *vide* decision in the Allahabad High Court Case No 223 of 1923, in the matter of Lallamal Hardeo Dass Cotton Spinning Mill Company of Hathras (1, Srinivasan Tax Cases, page 266) The words "no part of the income of the firm has been assessed" in rule 2(*b*) refer to cases in which the whole of the income of the person in question had escaped the attention of the Income-tax Department altogether until proceedings were started under section 34 They do not apply to a case in which proceedings have been taken under section 23 in respect of the income of any person and owing to that person's concealing part of his income he has been declared not liable to tax Here and wherever else in the Act or Rules there is nothing repugnant in the context the words "assess" and "assessment" evidently refer to the process of determining the amount of profit or loss made by a person in the previous year and not to the process of levying tax or declaring that no tax is payable which as section 23 shows is a process distinct from and subsequent to assessment although the word "assessee" is defined in sub section 2 of section 2 as a person by whom tax is payable The distinction between a registered and unregistered firm for the purposes of this Act is —

(*ii*) *Income-tax* is assessed upon the profits of a *registered* firm at the maximum rate whatever the amount of the profits of the registered firm may be (see Finance Act), and a member of such a r [illegible] Income-tax Officer that such maxi- r [illegible] applicable to his "total income," [illegible] minimum chargeable with income-tax, may get a refund on his share of those profits calculated at the difference between the two rates at the rate, at which income-tax has been levied as the case may be [see section 48 (*2*)], such share of the profits being included in the "total income" of such member for the purpose of determining the rate applicable [see section 16 (*1*)] In the case of an *unregistered firm income-tax* is levied on the income of the firm at a rate graded according to the profits of the firm as if it were an individual (see Finance Act), a member of such a firm is not entitled to any refund, but his share of the profits of the firm is included in his "total income" for the purpose of determining the rate at which he shall pay income tax on any other income [see section 16(*1*)].

(*iii*) The profits of a *registered* firm are liable to tax at the maximum rate even if they are less than Rs. 2,000 while an *unregistered* firm is not liable to income-tax if its profits in any one year are less than Rs. 2,000. But where the profits of an unregistered firm are not asssesed to income-tax, they are liable to tax in the hands of the individual members of the firm, that is, they are included in the assessable income of the individual member [see Finance Act and section 14 (*2*) (*b*)].

(*iv*) A *registered* firm is not liable to *super-tax*, the share of individual members in the profits of such a firm being included in the income of each individual member for the purposes of super-tax. An *unregistered* firm is, however, liable to super-tax (like an individual) on that amount of the profits of the firm which is in excess of Rs. 30,000 (see Finance Act and section 55 of the Income-tax Act). Super-tax is not payable by an individual having a share in an unregistered firm in respect of the profits of the unregistered firm, except, in cases where the profits of an unregistered firm have not been assessed to super-tax (see section 55, proviso). A firm cannot legally enter into partnership with another firm, *vide* decision of the Allahabad High Court in Jayadayal Madan Gopal *versus* Commissioner of Income-tax, United Provinces. It does not, however, follow that because a firm is not a partner in another firm what is described as its share in the profits of such firm is not its income. A firm in which another firm purports to be a partner cannot be legally registered for "income-tax purposes".

(*v*) It has been held that under the Indian Contract Act, 1872 (IX of 1872), a minor cannot become a partner in a firm. But he may be admitted to the benefits of partnership in a firm, with the consent of all the partners for the time being. A minor who purports to be a partner in a firm should be treated exactly like a minor who has been admitted to the benefits of partnership in a firm. A minor who has been admitted to the benefits of a partnership has a right to such share in the property and the profits of the firm as may be agreed upon—not between him and the partners, for he cannot be a party to a contract but between the partners; and his share in the property of the firm is liable for the acts of the firm, but he is not personally liable. *Provided that* there are at least two persons competent to contract among the members of the firm, the fact that there is also a minor who purports to be a member of the firm, or who has been admitted to the benefits of partnership in the firm, does not justify the Income-tax Officer in refusing to register the firm. In such cases the minor has an ascertainable share in the property and the profits of the firm. His share cannot be "ignored", or attributed to the other partners. The application to his share in the profits of the firm of the provisions of sub-section (*2*) (*b*) of section 14 and sub-section (*1*) of section 16 presents no difficulties whether the firm is registered or

not The fact that a minor cannot have the status of a member of a registered firm does not take away his right to a refund Section 48(2) specifically provides for such a refund, and a claim may be made on his behalf Similarly a claim is admissible on behalf of the minor to a set off under sub section (2) of section 24 in respect of his share in loss sustained by a firm

11 *Definition of total income* [*Section 2* (*15*)]—The phrase total income is used in sections 3, 15 (*3*), 16(*1*), 17, 22 (*1*) and (*2*), 23 (*1*) and (3), 48, 55 and 56 The necessity for the definition and for the use of the phrase is due to the fact that, as stated in paragraph 3, tax is payable not only by individuals, but also by firms, companies, Hindu undivided families and other associations of individuals, that is, the Act provides for taxation at the source in certain cases and for taxation in the hands of the individual recipient, in others Whether, however, tax is deducted at the source or in the hands of the individual recipient, it is the total income of the individual recipient from all sources to which the Act applies that determines his liability to income tax (that is, whether his total income amounts to Rs 2,000), and the rate at which he has to pay income tax on the whole of his income The solitary exception is in the case of Hindu undivided families, income from which [under section 14 (*1*) read with section 16 (*1*) of the Act] is not included in the total income of the individual recipient Again, there are certain classes or portions of income such as the amounts deducted from salaries under the proviso to section 7 (1), contributions to a recognised provident fund exempt under section 58 F (*1*), the sums paid on account of insurance premia under section 15, securities issued income tax free by the Government of India or by Local Governments under the provisos to section 8, on which income tax is not payable, but all such sums are included in the total income of the assessee for the purpose of determining his liability to income tax, and the appropriate rate at which the tax shall be levied There is, however, no taxation at the source in the case of super tax, except to the limited extent provided for by sub sections (3A), (3B), (3C) and (3D) of section 18, nor are there any portions of income (other than income derived from a Hindu undivided family by a member or from an unregistered firm in the special case mentioned in the proviso to section 55) which are exempted from payment of super tax and it is upon the total income that super tax is chargeable in the hands of the individual

12 *Graduation of income tax* (*Section 3*)—The Income tax Act deals merely with the basis the methods and the machinery of assessment, and does not contain, as the previous Acts did, schedules specifying the rates at which income tax shall be charged These rates are determined by the Finance Act which is passed annually by the Central Legislature The rates prescribed by the current Finance Act will be found at the end of Part I of

this Manual. The same remarks apply to super-tax (see section 55 of the Act).

13. *Definition of "Income".* (*Section 3*).—(*i*) Section 3 of the Act of 1918 provided that the Act should apply to "income". Difficulties were experienced in regard to the assessment of business profits owing to a High Court ruling that the word "income" in that section meant income actually or constructively received and that the use of the word in that sense in the said section restricted and limited any interpretation to be placed upon the following sections of the Act which specified the different classes of income liable to the tax. This interpretation would, if strictly followed, have caused considerable inconvenience in assessing business profits to those assessees who keep their accounts not on the basis of sums actually received and sums actually paid out but on the principles of mercantile accountancy, by the preparation of a profit and loss account and the comparison of the value of the stock in hand at the beginning and at the end of each year, since such assessees would have been required to recast the whole of their accounts on a cash basis for income-tax returns. There were other directions also in which so strict an adherence to the interpretation placed on the word "income" would have caused difficulties. For this reason the phraseology in section 3 and in other sections of the present Act has been re-worded. The plan adopted has been not to attempt a general covering definition of "income" but to prescribe that the tax shall be chargeable not upon "income" (whether "income" be deemed to mean actual receipts and expenditure or any other general definition) but in respect of "all income, profits or gains" as set out and defined in section 4 and sections 6 to 12 of the Act. If there is any class of income that does not fall within the words that impose the charge in those sections, that class of income is not within the scope of the tax.

(*ii*) For the method of accounting to be adopted in computing "income, profits or gains", see paragraph 60.

14. *Accounting period to be adopted for determining assessable income.* (*Section 3*).—(*i*) Under the Act of 1918 tax at the rates fixed for any year was levied on the income of that year. A provisional assessment was first made on the income of the preceding year and this assessment was subsequently adjusted and corrected when the income of the year in which the provisional assessment was made was ascertained. This system has now been abolished in the present Act which provides for the tax at the rates sanctioned for any year being assessed finally on the income, profits and gains of the "previous year" (see paragraph 6) and for the abolition of the adjustment sys[illegible]ept in the cases specially provided for in section 25. T[illegible]ons to the general rule that assessments are made fir[illegible]rofit[illegible]e previous

year are contained in this section Under the first two sub sections of section 25 in order to guard against a possible loss of revenue owing to delay in making assessments on the profits of businesses that close down during the course of a financial or commercial year, it is provided that in such cases, in addition to the assessment on the income of the previous year, a further assessment may be made in the year in which a business, profession or vocation is closed down on the income of that year This is merely a discretionary and not an obligatory method of assessment to be adopted in exceptional cases where delay in making the assessment might lead to a loss of revenue

(*ii*) The other class of cases provided for in sub section (*3*) of section 25 is confined to those particular businesses professions or vocations on which tax had been charged under the provisions of the Act of 1918 Since the abolition of the adjustment system meant that in the case of those particular businesses the tax would, had no special provision been made, have to be paid on the profits of one year more than under the system in force under the Act of 1918, it is specially provided that in the year in which such businesses professions or vocations close down, the adjustment provided for in the Act of 1918 shall be made

(*iii*) An exception to the general rule that assessments are made on the income of the previous year will also be found in section 24A Where it becomes known to an Income tax Officer that a person may leave British India during the financial year or shortly after its expiry and that he has no present intention of returning, Income tax Officer may proceed to assess him on his total income for the period from the expiry of the last previous year for which he has been assessed up to the probable date of his departure from British India This provision is intended to catch temporary residents such as touring theatrical companies or persons about to change their residence on retirement from the country, who would otherwise escape tax by leaving British *India before the close of the year The rate applicable in respect* of such assessments is the rate in force at the time of such assessment

15 *When income earned outside British India is taxable* [*Section 4* (*1*)]—(*i*) The Act applies to all income from whatever source it is derived if it accrues or arises or is received in British India or is, under the provisions of the Act deemed to accrue or arise or to be received in British India The tax is therefore, payable on all income arising or accruing in British India whether the recipient resides in British India or not [*see* Madras High Court Case. No 4 of 1921, Chief Commissioner of Income tax, Madras, *versus* Bhanjee Ramjee & Company (I, Srinivasan Tax Cases, page 147)] The tax is also payable in respect of income received in British India irrespective of whether it accrued or arose within or without British India The tax is also payable in respect

of income which is "deemed under the provisions of this Act to accrue or arise or to be received in British India". The particular cases where income is "deemed under the Act to accrue or arise or to be received in British India" are specified in section 4 (2), section 7 (2), section 11 (3), and section 42.

(ii) *Taxation of foreign incomes.* [*Section* 4 (2).]—Section 4 (2) was inserted in the present Act owing to the tax having previously been evaded in the case of income accruing or arising out of British India by bringing in the said income at intervals and claiming that as such income was not received in British India in the year in which it accrued or arose out of British India, it was, when brought into British India, not income but accumulated profits or savings or capital. The sub-section applies to all incomes, profits and gains accruing or arising outside British India to a person resident in British India and provides with respect to such income, profits and gains that they shall be deemed to be income, profits and gains of the year in which they are received or brought into British India notwithstanding that they did not accrue or arise in that year. The provision, of course, merely relates to income, profits and gains and not to the importation of capital. It does not apply to income, profits or gains which accrued or arose before the 1st day of April, 1933, on which day, the sub-section in its present form came into force. Income, profits or gains which accrued before the 1st day of April 1933 will be liable only if *they are income, profits and gains of a business* and are received in or brought into British India within 3 years of the end of the year in which they accrued or arose. Income from agriculture arising or accruing in an Indian State from land for which any annual payment in money or in kind is made to the State is also not liable under this sub-section.

(iii) In the Madras High Court Case No. 4 of 1919, Board of Revenue, Madras, *versus* Ramanadhan Chetty (I. Srinivasan Tax Cases, page 37), it has been held that profits derived from business carried on outside British India by persons resident in British India are not liable to assessment under the Act if the profits are not remitted to British India. The assessee in this case who resided in British India was a proprietor of a money-lending business carried on by his agents in various places outside British India. The only part taken by the proprietor in the business was to acquaint himself with the state of business abroad and occasionally to issue general instructions, and it was not disputed that none of the income accruing abroad had ever been transmitted to him in India.

(iv) In the Bengal High Court Case No. 56 of 1921, Bengal Nagpur Railway Company, Ltd., *versus* Secretary of State for India (I, Srinivasan Tax Cases, page 178), it has been held that the Bengal Nagpur Railway Company is not liable to pay tax on the interest guaranteed by the Secretary of State. This ruling

should be followed in the case of all Railway companies where the interest is guaranteed by the Secretary of State and is paid in England only It does not apply to cases where the interest is guaranteed by an authority other than the Secretary of State or is paid in India

(v) For the special case of tax on interest on sterling securities see paragraph 16

16 *Is interest on the sterling securities of the Government of India or on the sterling securities issued by English companies carrying on business in British India liable to Indian income tax?* —Where such interest is received by the debentures or security holder in British India, it is clearly liable to Indian income tax under section 4 (1), where, however, it is not received in British India, the tax will only be payable under the terms of the same section if the interest can be held to accrue or arise there Accrue or arise" as used in this connection are general words descriptive of a right to receive, and in this view the relevant portion of section 4 (1) of the Act may be paraphrased by stating that the income to which the Act applies is income received in British India or income which there is a right to receive in British India If this test is applied, interest on the sterling securities of the Government of India, if not received in British India, will not be chargeable with Indian income tax, and similarly the interest on sterling debentures issued by companies will not be chargeable if, as is usually the case, there is a right to receive it in England For the purpose of the test it is immaterial in what currency the security or loan and its interest is expressed, and consequently the same principle is also applicable in determining the liability to Indian income tax of the interest on foreign (other than sterling) debentures On the other hand, interest on promissory notes of the Government of India enfaced for payment in England is liable to Indian income tax, since here the right to receive payment of interests is a right to receive in India, and the concession by which Government paper can be enfaced for payment of interest in London does not constitute any part of the actual contract entered into by Government

17 *Exemptions—Incomes excluded from "total income"* —In addition to the exemptions mentioned in section 4 (3), the following further exemptions have been made by the Central Government in exercise of the powers conferred by section 60 of the Act

'The following classes of income shall be exempt from the tax payable under the said Act and they shall not be taken into account in determining the total income or salary of an assessee for the purposes of the said Act except for the purposes of sub-section (4) of section 48 —

(1) The official allowance which an agent of a Prince or State in India, who has been duly accredited to represent the Prince or State for political purposes in any place within the limits of

British India, receives as such agent in British India from the Prince or State; and the official salaries and fees which a Consul-General, Consul, Vice-Consul or Consular Agent of a foreign State, whether 'de carrier' or not, and whether a British or a foreign subject, or a representative or consular employee of a foreign State, not being a British subject, receives in India from such Foreign State in his capacity of Consul-General, Consul, Vice-Consul or Consular Agent, representative or consular employee.

(The latter portion of this exemption applies only to salaries and fees received from their Governments and not to any other income, profits or gains, accruing or arising to them or received by them in British India.)

(2) Sums paid in pursuance of Article 3 of the agreement, dated the 17th August 1825 between the British Government and the King of Oudh.

(3) Income derived from the *Bua* tax defined in clause (*c*) of section 2 of the Teri Dues Regulation, 1902.

(4) The salary and allowances paid by a State in India during the period of deputation to any person deputed by the State for training in British India.

(5) Scholarships granted to meet the cost of education.

(6) Such portion of the income of a member of His Majesty's Naval, Military or Air Forces, British or Indian, or of the Royal Indian Marine as is compulsorily payable by him under the orders, or with the approval of Government for payment to a mess, wine or band fund.

(7) The allowances attached to—

The Victoria Cross.

The Military Cross.

The Order of British India.

The Indian Order of Merit.

The King's Police Medal.

The Indian Police Medal.

(8) The interest on Government securities held by, or on behalf of, Ruling Chiefs and Princes of India as their private property.

(9) 'Jangi Inams' awarded to Indian officers, Indian other ranks and followers in respect of services in the Great War.

(10) The yield of Post Office cash certificates.

(11) The interest on deposits in the Post Office Savings Bank.

(12) The income of a University or other educational institution existing solely for educational purposes and not for purposes of profit

(13) The income of ' Thana Funds" administered by Political Agents in Kathiawar and of the Secunderabad Local (Abkari, etc ,), Fund" administered by the Resident at Hyderabad

(13 A) The income of the Rewa Kantha Mewas Administrations Fund and of the Sankheda Mewas Road Fund administered by the Political Agent, Rewa Kantha

(13 B) The following income of—

(a) the following funds controlled by the Resident for the States of Western India, namely —

The Kathiawar Consolidated Local Fund, the Rajkot Civil Station Land Improvement Fund, the Rajkot Civil Station Fund, the Kathiawar Mounted Police Fund, the Consolidated Local Fund, Mahi Kantha, the Consolidated Local Fund Banas Kantha including the Palanpur Agency Educational, Sihori, Deodar, Varahi, Santalpur Dispensaries, and Survey Funds, and the Sadra Bazar Fund,

(b) the village Police Funds, Kankrej, Deodar, Suigam, Varchi, Santalpur, controlled by the Political Agent, Sabar Kantha Agency, and

(c) the Wadhwan Civil Station Fund controlled by the Political Agent, Eastern Kathiawar Agency

(13 C) The income of the Nowgong Cantonment Fund

(13 D) The income of Regimental Institutes derived from rebates payable by Institute Contractors

(13 E) The interest on securities held by the Kathiawar Education Provident Fund

(13 F) The income of recognised Regimental Thrift and Savings Funds, the assets of which consist solely of deposits made by members and the profits earned by the investment thereof

(13 G) The income of the Kolhapur Residency Area Fund

(14) The salary of His Majesty's Trade Commissioners in India

(15) The salary of the Canadian Trade Commissioner in India at Calcutta

(16) The salary of the Trade Commissioner in India of the United States of America, and of any members of his staff who are citizens of the U S A and have been detailed for duty with the said Trade Commissioner by the Government of the said States

(16-A.) The salary of the Italian Trade Commissioner in India and of any members of his staff who are citizens of Italy and have been detailed for duty with the said Trade Commissioner by the Italian Government.

(17) The salaries of the correspondent of the International Labour Office, New Delhi, and his staff.

(18) The salaries of the Organiser and Manager of the Branch Office of the League of Nations, Bombay, and his staff.

(19) The salaries of Khasadars levies and Badraggas employed in the tribal territory on the North-West Frontier and of all persons employed in the tribal levy service in Baluchistan.

(20) The allowance or salary paid in the United Kingdom to officers of Government on leave or duty in that country whether such allowance or salary is paid in sterling in the United Kingdom or by means of negotiable rupee drafts on a bank in India.

(21) The leave allowance or salary drawn from any Colonial Treasury by officers of Governments on leave or duty in the Colony.

(22) Leave salaries or leave allowances paid in the United Kingdom or in a Colony, to officers of local authorities, or to the employés of Companies, or of private employers on leave in the United Kingdom or in such Colony.

(23) Vacation salaries paid in the United Kingdom or in a Colony to Judges of High Courts or of Chief Courts, to Judicial Commissioners, or to other officers of Government, when on vacation therein.

(24) The pensions of officers of Government residing out of India drawn from any Colonial Treasury or paid in the United Kingdom whether such pensions are paid in sterling or by means of negotiable rupee drafts on a bank in India.

(25) The salaries of the light-house keepers of light-houses in the Red Sea.

(26) The pensions paid in the United Kingdom or in a Colony to officers of local authorities or employés of companies or of private employers, such officers or employés being resident out of India.

(27) The interest on Mysore Durbar Securities.

(28) Pensions granted to officers of His Majesty's Naval, Military or Air Forces, British or Indian, or of the Auxiliary Force, India, or of the Indian Territorial Force, or of the Royal Indian Marine in respect of wounds or injuries received in action or in the performance of their duties as members of such forces otherwise than in action.

(28-A) *Extraordinary* pensions granted to Civil Officers (excluding family pensions granted as the result of the death of such an officer) under Chapter XXXVIII of the Civil Service Regulations, or the Army Regulations, India, as the case may be in respect of wounds or injuries received in the performance of their duties

(29) Pensions granted to members of His Majesty s Naval, Military or Air Forces, British or Indian, or of the Auxiliary Force, India, or of the Indian Territorial Force, or of the Royal Indian Marine, who have been invalided from service with such forces on account of bodily disability attributable to, or aggravated by, such service

(30) Value of rations issued in kind or money allowances paid in lieu thereof, to any officer or other rank in His Majesty s Naval, Military or Air Forces, British or Indian, or in the Auxiliary Force, India, or in the Indian Territorial Force, or in the Royal Indian Marine

(31) Value of rent-free quarters occupied by or money allowance paid in lieu thereof to, Indian officers, British Warrant and non-commissioned officers and men of His Majesty s Military or Air Forces, and British and Indian Warrant officers of His Majesty's Naval and Marine Forces, in all cases irrespective of whether the individual concerned is married or single

(32) Conservancy allowance granted in lieu of free conservancy to non departmental Warrant and non commissioned officers of the Indian Unattached List, departmental non commissioned officers of the India Unattached List not in receipt of consolidated rates of pay and Warrant and non commissioned officers of the permanent staff of the Auxiliary and Territorial Forces

(33) The value of the free education provided for the children of British Warrant and non commissioned officers and any grants in aid made to British Warrant and non-commissioned officers in lieu of the provision of free education for their children

(34) The income of persons, other than persons in the service of the Government, residing in the district of Angul

(35) Deferred pay within the meaning of paragraph 254 Pay and Allowance Regulations for the Army in India, Part II paid to soldiers or non Commissioned officers of the Indian Army

35 A Shore allowance granted to Warrant Officers of the Royal Indian Navy when employed on Marine Survey duties under paragraph 89 (*c*) of the Regulations for the Royal Indian Navy, Volume I

(36) The income of indigenous hillmen, other than persons in the service of Government residing in the following areas of Assam —

The Naga Hills District
The Lushai Hills District

The Sadiya Frontier Tract.

The Balipara Frontier Tract.

The Lakhimpur Frontier Tract.

The Garo Hills.

The Jowai sub-division of the Khasi and Jaintia Hills District and

The North Cachar Hills in the district of Cachar.

(37) The perquisite represented by the right of any of the officers specified in the annexed list to occupy free of rent as a place of residence any premises provided by the Central Government, the Crown Representative or the Provincial Government as the case may be.

List of officers.

The Governor General.

The Commander-in-Chief.

The Governor of a Governor's Province.

The Chief Commissioner of any of the following Provinces, namely :—

British Baluchistan,

Delhi,

Ajmer-Merwara,

Coorg,

The Andaman and Nicobar Islands,

and

any first class Resident of the Indian Political Department Service.

(38) Such part of income in respect of which the said tax is payable under the head "property" as is equal to the amount of rent payable for a year but not paid by a tenant of the assessee and so proved to be lost and irrecoverable, where—

(*a*) the tenancy is *bona fide* ;

(*b*) the defaulting tenant has vacated, or steps have been taken to compel him to vacate the property ;

(*c*) the defaulting tenant is not in occupation of any other property of the assessee ;

(*d*) the assessee has taken all reasonable steps to institute legal proceedings for the recovery of the unpaid rent or satisfies the Income-tax Officer that legal proceedings would be useless ; and

(e) the annual value of the property to which the unpaid rent relates has been included in the assessed income of the year during which that rent was due and income tax has been duly paid on such assessed income

(39) The lump grants made by Government to the Indian Church—

(1) for the provision of episcopal supervision and ministrations,

(2) for the payment of allowances to clergymen entertained in lieu of Chaplaincies reduced and

(3) in lieu of the grants in aid at present given for the entertainment of clergymen of the Additional Clergy Society under Articles 602 and 603 of the Civil Service Regulations

(40) When in any year an assessee has ceased to be an employee participating in a recognised Provident Fund and has been declared by the employer maintaining the Fund not to be eligible to receive the whole of the accumulated balance due to him, so much of his income as is assessable for that year shall be exempted from income tax and shall be excluded from the computation of his total income for the purposes of the said Act as is equivalent to so much of the accumulated balance due to him as has not been paid or is not payable to him, and if such amount exceeds the amount of his income in that year, so much of his income in the following year or years as is equal to the amount of such excess shall be so exempted and excluded in such year or years

(41) Income of a Service Fund derived from interest on Government securities or interest on funds deposited with the Central or any Provincial Government

For the purpose of this exemption, a Service Fund means a fund established under the authority of, or with the permission of, the Central or any Provincial Government for the purpose of securing deferred annuities to the subscribers, or payments to them in the event of their resignation or dismissal from the service in which they are employed, or provision for their wives or children after their death, or payments to their estate or their nominees upon their death to which servants of the Crown are alone admissible as subscribers or members and the funds of which are either deposited with the Central or any Provincial Government or invested in Government Securities

18 *Exemptions—Incomes included in "total income"* —The following classes of income shall be exempt from the tax payable

under the said Act, but shall be taken into account in determining the total income of an assessee for the purposes of the said Act :—

(1) The interest on Government securities purchased through the Post Office, and held in the custody of the Accountant-General, Posts and Telegraphs, provided that the exemption shall apply only to interest on securities so held on account of any one assessee up to a face value of Rs. 22,500.

(2) Sums received by an assessee on account of salary, bonus, commission, or other remuneration for services rendered, or in lieu of interest on money advanced, to a person for the purposes of his business,

where such sums have been paid out of, or determined with reference to, the profits of such business,

and, by reason of such mode of payment or determination, have not been allowed as a deduction but have been included in the profits of the business on which income-tax has been assessed and charged under the head "business" :

Provided that such sums shall not be exempt from the payment of super-tax unless they are paid to the assessee by a person other than a company and have already been assessed to super-tax.

(3) The profits of any Co-operative Society other than the Sanikatta Salt-owners' Society in the Bombay Presidency for the time being registered under the Co-operative Societies Act, 1912 (II of 1912), the Bombay Co-operative Societies Act, 1925, (Bombay Act VII of 1925), the Burma Co-operative Societies Act, 1927 (Burma Act VI of 1927) or the Madras Co-operative Societies Act, 1932 (Madras Act VI of 1932), or the dividends or other payments received by the members of any such Society out of such profits.

Explanation.—For this purpose the profits of a Co-operative Society shall not be deemed to include any income, profits or gains from—

"(1) investments in (*a*) securities of the nature referred to in section 8 of the Indian Income-tax Act, or (*b*) property of the nature referred to in section 9 of that Act;

(2) dividends, or

(3) the 'other sources' referred to in section 12 of the Indian Income-tax Act."

The exemption which extends both to income tax and super tax applies only to profits'' in the strict sense of the word as used in the Act and does not include 'income' derived by Co-operative Societies from interest on securities or dividends The Societies whose income liable to income tax is not taxable at the maximum rate or who have no income liable to tax should apply to the Income tax Officer concerned for the issue of exemption certificates authorising persons paying interest on securities not to deduct any tax at source or to deduct tax at a lower rate than the maximum, as the case may be

Where a Co operative Society incurs a loss under any head of income that has been exempted from tax by notification under section 60 (*1*) of the Act, such loss may be set off under section 24 against any income that is not so exempted

(4) Such part of the profits or gains of a firm which has discontinued its business, profession or vocation as is proportionate to the share of an assessee in the firm at the time of such discontinuance, if income-tax has at any time been charged on such business, profession or vocation under the Indian Income tax Act, 1918 (VII of 1918), or if an assessment has been made on the firm in respect of such profits or gains under sub section (*1*) of section 25 of the Indian Income tax Act, 1922 (XI of 1922)

The above exemption applies only to income tax and not to super tax

Apart from the particular cases mentioned in this paragraph, the incomes or portions of incomes exempted under section 4 of the Act and under the orders of the Governor General in Council under section 60 of the Act referred to in paragraph 17 are not only not subject to income tax or super tax but they are also not to be taken into account in determining the rate of tax on other income, they are excluded from consideration altogether

(5) So much of the income of any Investment Trust Company as is derived from dividends paid by any other Company which has paid or will pay super tax in respect of the profits out of which such dividends are paid

Explanation —For this purpose an investment trust company means a company in respect of which the Governor General in Council is satisfied that —

(*i*) it is a company having for its principal business the acquisition and holding of investments in the stocks, shares bonds debentures or debenture stocks of other companies or in securities issued by public authorities

(*ii*) it is not a company formed for the purpose of, or engaged in, acquiring or exercising control over any other company or group of companies or enabling any other persons to acquire or exercise such control,

(*iii*) it is a company deemed under clause (*b*) of the Explanation to sub-section (*2*) of section 23-A, of the said Act, to be a company in which the public are substantially interested.

The above exemption applies only to super-tax and not to income-tax.

19. Where, owing to the fact that the total income of an assessee has reached or exceeded a certain limit, he is liable to pay super-tax or to pay super-tax at a higher rate, the amount payable by him on account of income-tax and super-tax shall, where necessary, be reduced so as not to exceed the aggregate of the following amounts, namely :—

(*a*) the amount which would have been payable on account of income-tax and super-tax if his total income had been a sum less by one rupee than that limit, and

(*b*) the amount by which his total income exceeds that sum.

20. *Allowances in assessing profits of railway or tramway business.*—The following modification has been made in respect of income-tax in favour of income derived from railway or tramway business (other than an electric tramway) :—

An assessee deriving income from a railway or tramway business may at his option require that in computing the profits or gains of such business the following allowance shall be made in lieu of the allowances specified in clause (*v*), clause (*vi*) and clause (*vii*) of sub-section (*2*) of section 10 of the said Act, namely, the actual expenditure incurred by the assessee during the previous year on repairs, replacements and renewals of plant, machinery, buildings and furniture which are the property of the assessee.

Provided that an assessee who in any year has exercised the option hereinbefore conferred shall not be entitled save with the consent of the Commissioner of Income-tax to withdraw that option in any subsequent year.

Provided further that nothing in this notification shall apply to an electric tramway.

21. *Exemption of income derived from property held under a religious or charitable trust.*—(*i*) Under section 4 (*3*) (*i*) income derived from property which is held under a purely religious or

charitable *trust or under any other legal obligation* that it should be utilised for religious or charitable purposes is exempt The word property in this section does not bear the restricted mean ing that it bears in section 9 of the Act but includes securities a business or share in a business

(*ii*) Section 4 (3) (*i*) exempts two categories of income First, income from property which is dedicated absolutely and secondly in case of qualified dedication so much of the income as is applied or finally set apart for application to religious or charitable pur poses

(*iii*) In the case of absolute dedication *i e* where there is no outstanding secular interest reserved by the trust the exemption is complete In the case of qualified dedication the trust reserves a secular interest to beneficiaries Shebaits or heirs of the founder etc This secular interest is assessable to income tax Suppose 60 per cent is under the trust applicable to religious or charitable purposes and 40 per cent distributable among the heirs of the settler The 40 per cent is assessable Suppose also that only 50 per cent is actually applied or set apart for religious or charit able purposes and the heirs or the Shebaits misappropriate 10 per cent The 10 per cent is under the section also assessable

(*iv*) The maintenance of a Shebait may or may not come within the category of religious or charitable purpose It depends on the circumstances of the case If for instance a dedication is absolute and a small portion of the income is given to the Shebait for his remuneration for carrying out the trusts of the endowment it would not be secular If on the other hand a fixed sum is given to religious or charitable purposes and the residue of the income is given to the Shebait for his maintenance the residue would be held to be secular The test is whether a suit for partition lies for division of the residue If it does then the residue is secular and assessable In such case any portion of the dedicated *i e* ordinarily exempted income which may be misappropriated would also be assessable

(*v*) Section 4 (3) (*ii*) similarly exempts the income of religious or charitable institutions which is derived from voluntary contri butions and is applicable solely to religious or charitable purposes

(*vi*) To secure exemption under clause (*i*) or clause (*ii*) of sec tion 4 (3) the income of religious or charitable institutions and income derived from property held for religious or charitable pur poses need not be actually spent on religious or charitable purposes *in the year of receipt* It is sufficient if it is set aside for those purposes In the case of *mixed* trusts the income tax authorities are required to enquire into the application of the income Where property is held in part only for religious or charitable purposes a

proportionate share of any expenses incurred on management should be considered as applied to those purposes.

(*vii*) To remove doubts regarding the application of these two clauses, read with the definition of "charitable purposes," to universities and other educational institutions the special exemption under section 60 of the Act mentioned in paragraph 17 (*12*) was made.

Attention is also invited to the exemption mentioned in paragraph 17 (*5*) of scholarships granted to meet the cost of education in the hands of the recipients of the scholarships.

22. *Exemption of incomes of Local Authorities. [Section 4 (3) (iii).]*—A "Local Authority" is defined in section 3 (*28*) of the General Clauses Act as a "municipal committee, District Board, etc., legally entitled to, or entrusted by the Government with the control or management of a municipal or local fund". The words "legally entitled to or entrusted by the Government with" should be construed to mean "entitled by the law of British India to or entrusted by a Governmental authority in British India with". It follows therefore that there can be no "local authority" outside British India within the meaning of clause (*iii*) of subsection (*3*) of section 4 of the Income-tax Act. This view does not of course apply to local authorities in British administered areas in Indian States to which the Income-tax Act and the General Clauses Act have been applied.

23. *Exemptions of Provident Funds. [Sections 4 (3) (iv) and 4 (3) (v).]*—(*i*) Under section 4 (*3*) (*iv*), the interest on securities held by Provident Funds to which the Provident Funds Act, 1897 (now Act XIX of 1925), applies, is exempt from tax. Similarly under section 4 (*3*) (*v*), capital sums paid as accumulated balances at the credit of subscribers to *such* funds are exempt from tax and are not included in computing their "total income". The words "accumulated balance" include not only contributions but also interest thereon. Under section 15 (*1*), contributions paid by a subscriber to such funds are also exempt from income-tax to the extent mentioned in section 15 (*3*). Contributions by *employers* to such funds stand on a totally different footing and are dealt with in paragraph 64. For special privileges for "recognised" provident funds see paragraph 24 *et seq*..............

(*ii*) The exemptions granted to Provident Insurance Societies which comply with the provisions of the Provident Insurance Societies Act, 1912, or which have been exempted from its provisions, were withdrawn by the Income-tax (Amendment) Act, 1924 (XI of 1924). Provident Insurance Societies to which the Provident Insurance Societies Act applies, or which have been exempted from its provisions and which were in existence before 1st April

1924 will continue to enjoy the exemptions under sections 4 (3) (iv) and (v) and section 15 (1) to which they were entitled under Act XI of 1922 before it was amended by Act XI of 1924 These concessions cannot be claimed by any other Provident Insurance Societies

24. *Exemption of "recognised" Provident Funds* —(i) Besides the Provident Funds mentioned in paragraph 23, Provident Funds maintained by employers [section 58 A (b)] which conform to the conditions laid down in section 58-C of the Act inserted by the Indian Income-tax (Provident Funds Relief) Act, 1929, enjoy certain privileges in respect of income-tax subject to certain conditions The main conditions to which such Provident Funds must conform in order to secure these concessions are —

(1) that the funds shall be vested in two or more trustees or in the Official Trustee under an irrevocable trust,

(2) that the employer shall not be entitled to recover any sum whatsoever from the Fund except where the employee is dismissed for misconduct or voluntarily leaves employment without adequate reasons;

(3) that in any case such recoveries shall be limited to the contributions made by the employer himself,

(4) that the subscriptions of the employees and the contributions by the employer shall be regular and not casual,

(5) that the employers' contribution should not exceed the employees' subscription as a rule, and

(6) that the employee shall be employed in India or the principal place of business of the employer shall be in British India

The income-tax concessions are —

(a) contributions to a recognised Provident Fund both by the employee and the employer taken together shall be exempt from income tax but not from super tax up to 1/6th of the employee's annual salary In addition, an employee can obtain under section 15 (1) rebate of income-tax on insurance premia subject to the limit laid down in section 15 (3) If in any Fund the contributions made by an employee and the employer exceed the 1/6th limit, the excess contributions and the interest thereon together with interest in excess of the prescribed maximum (at present 6 per cent) will be liable to tax;

(b) income on the investments held by the Fund is also exempt from income tax;

(c) the accumulated balance due to an employee which includes interest on contributions—is also exempt from income-tax and super-tax and is not to be included in computation of the total income, provided the employee has rendered continuous service with his employer for not less than five years. The Commissioner has also power in certain circumstances to allow the exemption even when the service rendered is less than this period.

(ii) The contributions made by an employer to the individual accounts of his employee in a recognised Fund, *less* recoveries if any under the provisions of section 58-C (1) (f), are to be allowed as an item of expenditure under section 10 (2) (ix) of the Act, as the Fund is an irrevocable trust.

25. *Recognition of Provident Funds and withdrawal of recognition. (Section 58-B.)*.—(i) The Commissioner of Income-tax may accord recognition to any Provident Fund which, in his opinion satisfies the conditions prescribed in section 58-C and the Indian Income-tax (Provident Funds Relief) Rules. An employer objecting to an order of the Commissioner refusing to recognise a Provident Fund may appeal, within 60 days of such order, to the Central Board of Revenue in the form prescribed in the Indian Income-tax (Provident Funds Relief) (Central Board of Revenue) Rules.

(ii) There is no specific provision in the Act or Rules for an appeal against *withdrawal* of recognition by the Commissioner, but such an appeal should be allowed subject to the same conditions as are applicable to an appeal against an order of the Commissioner refusing recognition. The Government of India have reserved the power to withhold or withdraw recognition from any provident funds [section 58-B (2)].

26. *Conditions to be satisfied by recognised Provident Funds. (Sections 58-C and 58-D)*.—(i) *Investment of funds*.—(a) A recognised provident fund consists of contributions by employers and employees, accumulations, interest thereon and securities purchased therewith, and no other sums. So long as the "transferred balance", [section 58-J (2)] and the employers' contributions, interest thereon, etc., are not invested, the fund will consist solely of subscriptions, accumulations and interest thereon. If any part of the fund is deposited in the employer's own concern, and the employer gives the Trustees a promissory note therefor the note may be considered to be a "security" within the meaning of section 58-C (1) (d). So far as the transferred balance of a fund is concerned, there is no restriction as to the manner in which it should be held or invested. It may be utilised in the employer's

own business or deposited in a Bank or invested in securities in the widest sense of the term The same is true of the employer s contributions subsequent to recognition and the interest thereon and on the accumulations of such interest The em ployees contributions subsequent to recognition and the interest thereon and on accumulations of such interest must be invested in the securities of the nature prescribed in section 20 (*a*) (*b*) (*c*) (*d*) or (*e*) of the Indian Trusts Act 1882 and payable in respect of both capital and interest in British India

(*b*) A reasonable interval should be allowed to the trustees to accumulate the contributions collected before requiring their in vestment as above

(*c*) A fund is not rendered ineligible for recognition by the fact that it can be closed or wound up at will by the employer or the Trustees provided that it is not revocable otherwise than in accord ance with section 58 C (*1*) (*c*)

(*d*) The fact that a fund receives donations for example from retiring partners should not be held to render it ineligible for recognition

(*ii*) *Appreciation and depreciation in securities belonging to recognised provident funds* —(*a*) In certain Provident Funds it is the practice to revalue the securities held at the end of each finan cial year and to take the appreciation and depreciation thus ascertained into consideration before allocating to the members their share of the annual profit This practice does not render the fund ineligible for recognition *Plus* and *minus* entries re lating to such appreciation or depreciation should be made in the remarks column of the Form of account prescribed in rule 6 of the Indian Income tax (Provident Fund Relief) (Central Board of Revenue) Rules (Part II of the Manual) Such appreciation or depreciation need not be taken into account in determining the rate of interest under section 58 F (*2*)

(*b*) The appreciation of securities itself cannot directly come into the computation of the employee s total income or be liable to tax at any time Though it is a form of accumulation of contri butions it is also not income but an increase of capital

(*iii*) *Forfeitures to recognised provident funds* [*Section 58 C* (*1*) (*d*)]—(*a*) The only amounts that an employer is allowed by the Act to recover from a recognised Provident Fund are his own contributions to the account of a dismissed employee or an em ployee voluntarily leaving his employment as stated in section 58 C (*1*) (*f*) and of interest on such contributions If the rules of any fund provide for forfeitures to the employer of any other monies—for example of a dismissed employee s own contributions and the

interest thereon, this provision is repugnant to section 58-C (*1*) (*f*) and renders the fund ineligible for recognition.

(*b*) A provision for the forfeiture to the *fund* in certain circumstances (*e.g.*, assignment of employee's interest, an employee leaving service to take employment under a rival) of so much of the amount standing to the credit of an individual employee as is in no circumstances recoverable by the employer, under clause (*f*) of sub-section (*1*) of section 58-C of the Act, does not render the fund ineligible for recognition under that sub-section.

(*c*) Such amounts represent accumulations of sums credited out of the employee's salary with interest thereon, and it is clear that these amounts are within the language used in clause (*d*) of sub-section (*1*) of section 58-C, read with the definition of "contribution" in clause (*d*) of section 58-A. The effect of clause (*g*) of sub-section (*1*) of section 58-C is not to require that so much of the balance at the credit of an individual employee as is not recoverable by the employer under clause (*f*) should be payable to the employee. It requires the accumulated balance due to the employee to be payable to the employee, and the definition of "accumulated balance due" in clause (*g*) of section 58-A expressly recognises the possibility that by the regulations of a fund any part of the balance to the credit of an employee may be excluded from the amount claimable by him and therefore from the accumulated balance due for the purposes of clause (*g*) of sub-section (*1*) of section 58-C.

(*d*) While therefore recoveries by the *employer* are governed by clause (*f*) of sub-section (*1*) of section 58-C, forfeitures to the *fund* are left by the Act to be governed by the regulations of the fund, so that no provision in the regulations of the funds for the forfeiture to the *fund* of any part of the balance to the credit of the individual employee will render the fund ineligible for recognition.

(*e*) The inclusion in the rules of a provident fund of a provision for the payment of forfeited amounts of an individual member to his wife and family does not render the fund ineligible for recognition. The definition of the expression "accumulated balance due" to an employee which is set out in section 58-A makes it plain that the amount which is payable to the employee, is not necessarily the equivalent of the total of his contributions, the employer's contributions and the interest which has accumulated thereon; and the provisions of clause (*g*) of section 58-C, read with this definition of the "accumulated balance due" are not inconsistent with the payment to a third party of forfeited amounts, although the circumstances in which the employer can himself take these amounts are limited by clause (*b*) of section 58-C.

(*f*) The inclusion in the regulations of a provident fund of a provision for the forfeiture to the fund of the accumulated balance due to an employee who dies without heirs also does not make the fund ineligible for recognition Such forfeiture to the fund does not put anything into the fund, because what is forfeited to the fund is already in the fund As the act of forfeiture does not put any sum at all into the fund, it cannot be held to put into the fund any sum other than the contributions, etc , specified in section 58-C (*1*) (*d*) The question of the validity of a regulation forfeiting to the fund the accumulated balance due to an employee who dies intestate and without heirs does not arise, as the existence of such a regulation, whatever it may be worth, does not affect the composition of the fund for purposes of clause (*d*) of sub-section (*1*) of the same section

(*iv*) *Payment of accumulated balances of recognised provident funds to employees discontinuing participation* [*Section 58-C* (*1*) (*g*) and (*h*)]—(*a*) If an employee who is a subscriber to a recognised provident fund, the membership of which is optional, decides to discontinue his membership of the fund while not resigning his employment, he is entitled to claim repayment of the accumulated balance at his credit, under section 58 C (*1*) (*g*), of the Act Under section 58-A (*c*) of the Act, an "employee" means an employee participating in a provident fund Thus a person who discontinues his participation in a fund "ceases to be an employee" within the meaning of section 58-C (*1*) (*g*) and is, therefore, entitled to claim payment of the accumulated balance due to him

(*b*) A private provident fund, participation in which is *optional*, is not qualified for recognition unless the rules confer on the participants the right to receive payment of the accumulated balance whenever participation is discontinued

27. *Recognised Provident Funds of business with principal place out of India* [*Section 58 C* (*1*) (*a*)] —If a concern has its principal place outside British India, the Provident Fund of the employees of its British Indian business, if it is to be "recognised", should be kept separate and must conform to the conditions imposed by the Act and the Rules thereunder The expression "all employees" occurring in section 58 C (*1*) (*a*) refers to "all employees *subscribing* to the Fund" and not to all employees of the particular employer. If a concern has its principal place of business in British India, there is no objection to the foreign staff—that is the staff outside British India—subscribing to the Provident Fund They will not get any rebate of tax on the monthly contributions since their salaries having been earned outside British India will not be taxed but they will get the advantage

of the exemption from income-tax of the interest on the investments of the fund.

28. *Interest on accumulated balances in recognised provident funds. (Section 58-F.).—(i)* Interest on accumulations in recognised provident funds is exempt from income-tax but not from super-tax up to a rate to be fixed by Government which is 6 per cent. at present. In some funds a provisional rate of interest is allowed to the employees in the first instance and the difference between the interest actually earned by the fund and the provisional rate so allowed is distributed between the employees on a basis which has some regard to the length of service of the employees. In such cases, the interest credited to the individual accounts should be exempted in so far as the average interest earned by the fund as a whole does not exceed the prescribed rate of interest.

(ii) Interest on sums credited to an employee's account in a recognised Provident Fund, which sums represent his share of the appreciation in the value of the securities held by the Fund, is to be regarded as interest within the meaning of sections 58-A *(f)* and 58-C *(1)* *(d)*.

29. *Interpretation of "salary" in relation to recognised provident funds. [Section 58-F (1)].*—That the expression "salary" as used in Chapter IX- A of the Act does not embrace everything taxable under the head "salaries" in accordance with sub-section *(1)* of section 7, is obvious from clause *(b)* of sub-section *(1)* of section 58-C read with clause *(b)* of section 58-D. For the purposes of Chapter IX-A, "salary" includes so much only of an employee's remuneration as is of a specific monetary amount and is payable periodically. It includes "salary" (in the more general sense in which that expression embraces "wages") which is received by any category of employees other than those excluded in clause *(c)* of section 58-A.

30. *Accounts of recognised provident funds. (Sections 58-I and 58-J).—(i)* The accounts of recognised provident funds are to be maintained in the form prescribed in the Indian Income-tax (Provident Funds Relief) (Central Board of Revenue) Rules. If a concern has several branches, the annual abstracts of the provident funds accounts should be sent by the employer to all Income-tax Officers who are responsible for assessing the employees.

(ii) The accounts to be made under the provisions of section 58-J must show in respect of every employee the particulars given in rule 8 of the Indian Income-tax (Provident Fund Relief) (Central Board of Revenue) Rules.

31. *Treatment of a fund transferred by employer to trustees (Section 58 K)* —(i) Any sum transferred by an employer before coming into force of the Indian Income tax (Provident Funds Relief) Act, 1929, to the Provident Fund of his employees which has been converted into an irrevocable trust is a permissible deduction in assessing the profits of the employer Sub section (*1*) of section 58 K operates with reference to any assessment made after the coming into force of the Provident Funds Relief Act XII of 1929 *whenever the conditions necessary to its operation are satisfied* The conditions necessary to its operation are that it can be predicated of the employer —

(*a*) that he maintains a Provident Fund for the benefit of his employees,

(*b*) that he has not transferred the Fund or relevant portion thereof,

(*c*) that he transfers the Fund or relevant portion

The use of the perfect tense in the definition of condition (*b*) and of the present tense in the definition of condition (*c*) shows that these conditions cannot be satisfied by any employer who, having already transferred the Fund of relevant portion before the Provident Funds Relief Act came into force was not when the Act came into force in the position of not having transferred it and was therefore not in a position to transfer it

(*ii*) It must not be overlooked that while an employer who has effected a transfer before the coming into force of the Provident Fund Relief Act will not suffer the loss resulting from the operation of sub section (*1*) of section 58 K he will as a corollary not enjoy the benefit resulting from the operation of sub section (*2*) of that section

(*iii*) Employers subscriptions to an unrecognised provident fund may be treated as business expenses if the conditions laid down in paragraph 64 are satisfied Lump transfers of accumulated subscriptions with or without interest thereon, made after the Provident Funds Relief Act, 1929, came into f[illegible], are governed by section 58 K which is specifically mad[illegible] [illegible]able to unrecognised as well as to recognised funds

32 *Meaning of the word "securities" as [illegible] 4 (*
(*iv*) —The definition of the phrase "int[illegible]" [illegible] section 8 of the Act should not be applied [illegible] the interpretation to be given to these words in [illegible] words as used in section 8 are in a [illegible] do not cover, for example interest [illegible] as a mortgage Nor should the [illegible]

in section 4 (3) (*iv*) be restricted to the ordinary limited legal sense in which it must always have reference to a loan. Provident Funds are entitled to invest in any trustee security, and it has not been the intention of Government to discriminate between the various classes of investments which are thus legally authorised The word "securities" in section 4 (3) (*iv*) should therefore be interpreted as covering all securities mentioned in section 20 of the Indian Trust Act.

33. *Perquisites or benefits not capable of conversion into money.*—(*i*) The provision in section 3 (*2*) (*ix*) of the Act of 1918 that "any perquisite or benefit which is neither money nor reasonably capable of being converted into money" was not liable to tax, has been omitted in the Act, as the existence of that provision made it impossible to assess to income-tax, for example, rent-free residences in cases where the assessee had not the power to sub-let, while rent-free residences were liable to the tax where the assessee had the power to sub-let. An explanation has been added to section 7 (*1*) of the Act specifically providing for the taxation of perquisites in the form of rent-free residences.

(*ii*) Under section 7 (*1*) of the Act, all perquisites received by an employé in lieu of or in addition to salary or wages are liable to the tax. House-rent allowances and the value of rent-free quarters form additions to the remuneration of an employé; and even where residence in a particular town or building is necessary for the proper performance of the employé's duties, such allowances or perquisites cover expenses of a personal character which the employé would otherwise have to incur. They do not therefore "meet expenses wholly and necessarily incurred in the performance of the duties of an office or employment of profit" and are therefore not covered by the exemption in section 4 (*3*) (*vi*) of the Act and are taxable under section 7 or section 12.

(*iii*) Two conditions have to be fulfilled before the exemption specified in section 4 (*3*) (*iv*) can apply. The expenses incurred by the employé must be wholly and necessarily incurred in the performance of his duties as an employé; and the allowances or perquisites must have been granted by the employer with the set purpose of meeting the extra expense thus caused to the employé, and that extra expenses only. It is thus a question of fact in each case whether house-rent allowance or the value of the rent-free quarters is exempt from the tax, but the following examples will serve to indicate the lines on which the decision should be made :—

(*a*) A currency officer is granted rent-free quarters in his currency office. Even though his residence in that office is necessary for the proper performance of his duties, he will be liable to the tax on the value of his

rent free quarters since he would in any case have had to provide himself with a residence, and the perquisite does not therefore meet expenses wholly incurred in the performance of the duties of an office or employment of profit

(b) A firm in Calcutta makes a practice of providing its employes with rent free quarters, and houses some of its employes in its business premises as resident clerks The employés of the firm, including the resident clerks will, as in the previous case, be liable to income tax on the value of their rent free quarters

(c) A Government office has its headquarters in Bombay, but proceeds for some months in the year elsewhere, and grants its ministerial establishment house rent allowances or rent free quarters in the place to which it proceeds with the specific object of providing for the maintenance of a second and, from the point of view of the grantees, unnecessary residence in order that they may perform their duties there The allowance or the value of rent free quarters will be exempt from income tax

(iv) In all cases where rent free houses form part of the perquisites of an employé, the cash value of such a house to the occupier need not ordinarily be deemed to be more than 10 per cent of the salary of the employé Where an employé is provided with rent free furnished quarters no attempt should be made to split the value of this perquisite into its component elements i e , rent free quarters and rent free furniture The maximum of 10 per cent of salary should be applied to the perquisite as a whole

(v) Such perquisites as (for example), tiffin, domestic services or the value of passages by rail or steamer provided by employers free of charge for their employees are not taxable because they are not convertible into money and there is no special provision in the Act in regard to them as there is in regard to rent free quarters, but passage money paid in India by an employer to his employe to enable him to go on leave is liable to tax If, however, passage money is remitted by the employer to the United Kingdom or a Colony and paid there to an employe on leave in such country, it should be regarded as a leave allowance covered by the exemption (22) in paragraph 17

(vi) Special allowances granted solely to meet the higher cost of living in a station such as Compensatory local allowances and the Cutch exchange compensation allowance are liable to the payment of tax

(*vii*) Rewards granted to officials for passing compulsory examinations must be distinguished from grants made to assist candidates to meet the expenses of preparing for such examinations. Such tuition grants fall under section 4 (*3*) (*vi*) of the Indian Income-tax Act (XI of 1922) and are not liable to tax even if they are only paid to successful candidates. The so-called 'rewards' paid to Military Officers and other ranks for passing compulsory language examinations are all to be treated as tuition grants and not as rewards and therefore as not being liable to income-tax. If in any other case rewards for passing compulsory examinations are taxable, they will be taxable as salaries and tax should be deducted at source. For the exemption of rewards in optional examination, see paragraph 36, sub-paragraph (*ix*).

(*viii*) In addition to classes or portions of "Salaries" drawn by officers and other ranks of the Army in India (British and Indian) mentioned in paragraphs 17 and 22, the following allowances are not liable to income-tax :—

Messing allowance;

Syce allowance;

Forage allowance;

Detention allowance;

Meal money;

Quarterly kit and clothing allowance;

Outfit allowance;

Tentage allowance whether separate or included in pay;

Horse allowance;

Travelling and conveyance allowances; and

Any capital sum received in commutation of the whole or a portion of a pension or in nature of consolidated compensation for death or injuries or in payment of any Insurance Policy or as the accumulated balance at the credit of a subscriber to any such Provident Fund.

(*ix*) The emoluments drawn by the officers and other ranks of the Army which are liable to income-tax are :—

1. Regimental Pay, Command or charge allowances. Staff Pay, P. S. C. Pay and Separation allowance.

2. Ordnance Pay.

3. Corps or Engineer Pay, Batta or field allowance.

4 Lodging allowance

5 Value of rent free quarters (officers)

6 Service or proficiency pay

7 Extra duty pay

8 Gratuities under Pay and Allowance Regulations, paragraph 137 (I)

9 Annuities under Pay and Allowance Regulations, paragraph 137 (II)

10 Bounty money

11 Pension drawn in conjunction with pay

12 Separation allowance

13 Furniture allowance

14 Pensions (except wound or disability) paid in India to British and Indian officers and men their widows, children and dependants

15 Half yearly gratuity paid to temporary nursing sisters

(*x*) The Marriage allowance is not taxable if paid to the wife of a soldier unless the total income of the wife including the allowance exceeds the minimum taxable limit Similarly Maternity benefit is liable only if the total income of the soldier s wife including the benefit exceeds the minimum taxable limit

(*xi*) The handling charges granted to Station Masters are not liable to income tax since they are intended solely to cover certain expenses that the Station Masters have to incur as such

(*xii*) As regards the liability of language rewards and examination fees see paragraph 36

34. *Casual gains* [*Section 4* (3) (*vii*)]—(*i*) In order to obtain exemption under this sub section, receipts must comply with two conditions, *viz* —

(1) they must not be the proceeds of a profession, vocation or occupation, or arise from business, that is from 'any adventure or concern in the nature of trade commerce or manufacture' [See section 2 (4)], and

(2) they must be of a casual and non recurring nature

(*ii*) Both these conditions must be fulfilled. It is important to note that receipts may be isolated and yet may not be *of a* casual and non-recurring *nature*, [See ruling in the High Court of Judicature at Allahabad in the case of Chuni Lal Kalyan Das *versus* Crown (1, Srinivasan Tax cases, page 421)]. The following are illustrations of the effect of the provisions of section 4 (*3*) (*vii*)—

(1) A purchases a house with a view to re-selling it at a profit. His profits from the transaction are liable to income-tax (even although it be an isolated transaction*). B purchases a house for his own residence and later on sells it at a profit. His profit is not liable to the tax.

(2) A wins a prize in a lottery or a bet on the race course, His receipts therefrom are not taxable. B is a bookmaker. His profits from betting are taxable.

(3) A is a professional beggar. His receipts from mendicancy are not exempted from the tax by this sub-section.

(4) A makes a practice of speculating in the purchase and sale of shares. His profits therefrom are liable to the tax. B purchases Indian War Loan 1929-1947 at 95 redeemable at par. The premium received on redemption after a period of years is not liable to the tax. On the other hand the yield from Treasury Bills arising from their issue at a discount and repayment at par after 12 months or some shorter period is liable to the tax under section 12, though as this yield is not interest, the tax is not deducted at the source under section 18 (*3*).

(5) A man writes a book. His receipts from its sale are taxable.

(6) Lump sum legacies are exempt; annuities granted under a will are not exempt.

35. *Income-tax Authorities*. (*Section 5*).—(*i*) The *Central Board of Revenue* is appointed by the Central Government. Its specific powers are mentioned in the various sections, *e.g.*, section 2 (*6*), 2 (*11*) (*b*), 5 (*5*), 18 (*6*) and 59. Rules for carrying out the purposes of the Act are made by the Central Board of Revenue which also issues instructions regarding the interpretation of the provisions of the Act and the rules, and is entrusted with the general administration of the Act.

(*ii*) (*a*) The head of the Income-tax Department of a province or other specified area is the Commissioner of Income-tax who is

*c.f. Rutledge *versus* Commissioner of Inland Revenue Reports of the U. K. Tax cases, Vol. XIV, page 490.

appointed by the Central Government The rest of the Income tax Staff in a province or other specified area is subordinate to him With the exception of Assistant Commissioners they are appointed [illegible] ant Commissioners of Income tax are made by the Central Govern [illegible] nanent appointments it is also necessary to consult the Federal Public Service Commission except when an officer of an All India Service or Central Service Class I is appointed Permanent appointments of Income tax Officers and Assistant Income tax Officers (except in the case of non gazetted Assistant Income tax Officers in Madras) whether filled by direct recruitment or by promotion from subordinate ranks are made by the Commissioner with the approval of the Central Board of Revenue

(b) The Commissioner of Income tax has full power to specify the functions to be performed by each Assistant Commissioner of Income tax and Income tax Officer and the areas persons and classes of income in respect of which these functions may be exercised He may appoint one or more Income tax Officers or Assistant Commissioners for the same area and allocate the work to be done by them in such manner as he may think fit

(c) The powers of officers to inflict penalties on the staff and *the right of appeal of such staff against orders inflicting penalties* are governed by the rules in Parts XII and XIII of the Civil Services (Classification Control and Appeal) Rules

The specific powers conferred upon him in regard to income-tax assessments are specified in sections 28 (*1*) 3[illegible] [illegible] 64 (*2*) second Proviso 64 (*3*) and 66 of the Act In particular [illegible] ed with power under section 33 to review any orders passed by any income tax official and he alone may under section [illegible] of the Act, state cases for the opinion of a High Court

(*iii*) The functions of *Assistant Commiss*[illegible] *Income tax* are mainly appellate but they also exercise [illegible] the work of the Income tax Officers The particular powers [illegible] on them by the Act are set out in section [illegible] 37 [illegible] 39 42 (2) and 53

(*iv*) (*a*) *Income tax Officers* are the assessors [illegible] Section 64 of the Act specifies the particular Income-tax Officer [illegible] assessments shall be made *i e* [illegible] be made in the case of a business by the Income-tax Officer [illegible] area where the *principal place of* [illegible] other cases by the Income tax Officer [illegible] assessee resides sub section (*4*) of [illegible] Income tax Officer shall have all [illegible] the Act on an Income tax Officer [illegible] or gains accruing or arising or [illegible]

he is appointed. This particular provision was inserted mainly in order to permit of enquiries being made into the profits of a branch business by the Income-tax Officer of the place in which the branch is situated and in order to enable every Income-tax Officer to make enquiries regarding all income, profits and gains arising or accruing within the area to which he is posted, even though the assessment in respect of the particular income, profits or gains may not be made by him. Income-tax Commissioner should therefore secure by issuing instructions or otherwise that there is no overlapping in this matter and that the same person is not assessed to income-tax by more than one Income-tax Officer but should at the same time secure that all Income-tax Officers shall give the utmost assistance to the assessing Income-tax Officer in regard to any property, income, profits or gains within their respective areas which are liable to assessment elsewhere.

(*b*) While it is intended that the work of making assessments, of hearing appeals and of passing orders in review shall ultimately be carried out by separate officials known as the Income-tax Officer, the Assistant Commissioner and the Commissioner, as a complete whole time staff for income-tax work has not yet been appointed in some of the provinces, section 5 (4) makes provision for the *continuance, until such whole time staff is engaged, of the existing system under which individual officers exercise the powers of an* assessing authority in respect of particular classes of income and of an appellate authority in respect of others, while the reviewing authority is in certain cases also the appellate authority.

(*c*) While the income-tax staff will as a rule be appointed in provincial cadres, there are certain classes of cases for which it may be advisable that assessments should be made by an all-India staff. Such, for example, are the cases of military officers and of officers of other departments serving directly under the Government of India who are liable to transfer from one province to another; and there may be other cases such as the assessment of railway companies which at any time it may be considered advisable should be dealt with by a special officer for the whole of India. Sub-section (5) of this section has been inserted to make provision for the appointment of special officers in such cases.

(*d*) The officers specified in the 3rd, 4th and 5th columns of the schedule below have been appointed to perform all the functions of an Income-tax Officer, Assistant Commissioner of Income-tax and Commissioner of Income-tax, respectively, in respect of the persons specified in the corresponding entry in the 2nd column thereof.

SCHEDULE

Serial No	Persons	Officer appointed to perform the functions of—		
		Income tax Officer	Assistant Commissioner of Income tax	Commissioner of Income tax
1	2	3	4	5
1	Employés of the Bengal and North Western Railway	Income tax Officer, Gorakhpur	Assistant Commissioner of Income tax, Benares	Commissioner of Income tax, Central and United Provinces
2	Employés of the Pertabpore Company, Limited	Do	Do	Do
3	Persons excluding pensioners and persons employed in Army factories, payable from Army estimates through the Controller of Military Accounts, Eastern Command Meerut and Lucknow districts, Meerut	Income tax Officer, Military Circle Meerut	Assistant Commissioner of Income tax Meerut	Do
4	Employés of the British India Corporation Ltd stationed at Rangoon	Income tax Officer, Cawnpore	Assistant Commissioner of Income tax, Cawnpore	Do.
5	Employés of the Assam Bengal Railway	Income tax Officer, Chittagong	Assistant Commissioner of Income-tax, Dacca	Commissioner of Income-tax, Bengal
6	Indian employés in Sind, Punjab and Delhi of Messrs Ralli Brothers	Income tax Officer, B Division, Karachi	Assistant Commissioner of Income-tax, Sind.	Commissioner of Income-tax, Bombay.
7	European employés in British India and Indian employés in Bengal, Bihar and Orissa, Assam and the United Provinces of Messrs Ralli Brothers	Income tax Officer, Calcutta, District IIIA	Assistant Com[illegible]	[illegible]
8	European employés of Messrs Ralli Brothers in Berar	Do	Do	Do

SCHEDULE—*contd.*

Serial No.	Persons.	Officer appointed to perform the functions of— Income-tax Officer.	Assistant Commissioner of Income-tax.	Commissioner of Income-tax.
1	2	3	4	5
9	European employés of the Imperial Tobacco Company, India Limited, and the Indian Leaf Tobacco Development Company Limited, in the provinces of Bombay, Madras, United Provinces, Punjab, Bengal, Bihar, Orissa and Assam.	Income-tax Officer, Calcutta District IIIA.	Assistant Commissioner of Income-tax, Headquarters (at Calcutta).	Commissioner of Income-tax, Bengal.
10	*European employés* of the Tobacco Manufacturers (India) Limited, and the Printers (India) Limited, in the provinces of Bombay, Madras, United Provinces, Punjab, Bengal, Bihar, Orissa and Assam.	*Do.*	*Do.*	*Do.*
11	Employés of the "*Statesman Limited*" stationed at Lahore and Delhi.	Do.	Do.	Do.
12	Employés of Messrs. Burmah-Shell Oil Storage and Distributing Company of India, Limited, stationed at Delhi.	Do.	Do.	Do.
13	Pensioners residing outside Bengal who are under the audit of the Accountant General, Bengal.	Income-tax Officer, Central Salaries Circle, Calcutta.	Do.	Do.
14	Employés of the Bengal Nagpur Railway.	Income-tax Officer, Railways and Miscellaneous Salaries Circle, Calcutta.	Assistant Commissioner of Income-tax, Calcutta.	Do.

SCHEDULE—*contd.*

Serial No.	Persons	Officer appointed to perform the functions of—		
		Income tax Officer	Assistant Commissioner of Income tax	Commissioner of Income-tax.
1	2	3	4	5
15	Employés of the East Indian Railway.	Income-tax Officer, Railways and Miscellaneous Salaries Circle, Calcutta	Assistant Commissioner of Income-tax, Calcutta.	Commissioner of Income-tax, Bengal
16	Government servants serving outside Bengal who are under the audit of the Accountant General, Bengal	Do	Do	Do
17	Military employés under the audit of the Controller of Army Factory Accounts, Calcutta, who are serving outside Bengal or whose pension is disbursed by the said officer	Do	Do	Do
18	Pensioners and persons employed in Army Factories whose pensions and salaries are payable from Army Estimates through the Controller of Military Accounts, Eastern Command, Meerut and Lucknow Districts, Meerut, who reside in Bengal	Do.	Do	Do
19	Officers of the Women's Medical Service and of the Junior Branch of the same	Income tax Officer, Simla.	Assistant Commissioner of Income-tax, Delhi	Commissioner of Income-tax, Punjab, N. W. F. and Delhi Provinces.
20	Members of the Nursing Staff of the Lady Minto's Indian Nursing Association.	Do	Do	Do

SCHEDULE—*contd.*

Serial No.	Persons.	Officer appointed to perform the functions of—		
		Income-tax. Officer.	Assistant Commissioner of Income-tax.	Commissioner of Income-tax.
1	2	3	4	5
21	Military employés stationed in Sind who are under the audit of the Controller of Military Accounts, R. A. F., Ambala.	Income-tax Officer, Ambala.	Assistant Commissioner of Income-tax, Delhi.	Commissioner of Income-tax, Punjab, N. W. F. and Delhi Provinces.
22	Employés of the Madras and Southern Mahratta Railway except those under the audit of the Audit Officer, Railway Collieries, Calcutta.	Income-tax Officer, 4th Circle, Madras.	Assistant Commissioner of Income-tax, Eastern Range, Madras.	Commissioner of Income-tax, Madras.
23	All Government servants under the audit of the Accountant General, Madras.	Income-tax Officer, 5th Circle, Madras.	Do.	Do.
24	All Government servants who are under the audit of the Deputy Accountant General, Posts and Telegraphs, Madras, but do not reside in Burma or the Andaman Islands.	Income-tax Officer, 6th Circle, Madras.	Do.	Do.
25	Military employés under the audit of the Controller of Military Accounts, Poona and Southern Command, Poona.	Income-tax Officer, Poona District.	Assistant Commissioner of Income-tax, Central Division, Poona.	Commissioner of Income-tax, Bombay.

SCHEDULE—*contd*

Serial No.	Persons.	Officer appointed to perform the functions of—		
		Income-tax Officer.	Assistant Commissioner of Income tax	Commissioner of Income tax
1	2	3	4	5
26	Government servants under the audit of the Accountant-General, Central Revenues (excluding Government servants in the Indian Audit and Accounts Service attached to Railway and Postal Audit Offices and Currency Offices, Rangoon and Madras), the Military Accountant-General, the Deputy Accountant General, Posts and Telegraphs, Delhi, or the Audit Officer, Indian Stores Department, and Government servants resident in the Andamans who are subject to the audit of the Deputy Accountant General, Posts and Telegraphs, Madras	Income tax Officer, Salary Circle, Delhi	Assistant Commissioner of Income tax, Delhi	Commissioner of Income tax, Punjab
27	Persons (not being *ex* enemy nationals) paid through the Controller, Local Clearing Office (Enemy Debts).	Do .	Do	Do
28	Military pensioners resident in the States of Mewar, Bharatpur, Bikaner, Jaipur, Marwar, Alwar and Bhopal who are under the audit of the Controller of Military Accounts and Pensions, Lahore.	Do .	Do.	Do

SCHEDULE—*concld.*

Serial No.	Persons.	Officer appointed to perform the functions of— Income-tax Officer.	Assistant Commissioner of Income-tax.	Commissioner of Income-tax.
1	2	3	4	5
29	Pensioners who draw their pensions from the Hyderabad (Deccan) Treasury and are under the audit of the Accountant General, Central Revenues.	Income-tax Officer, Salary Circle, Delhi.	Assistant Commissioner of Income-tax, Delhi.	Commissioner of Income-tax, Punjab.
30	Employés of the North Western Railway except those under the audit of the Audit Officer, Railway Collieries, Calcutta.	Income-tax Officer, Railway, Salary Circle, Lahore.	Assistant Commissioner of Income-tax, Lahore.	Do.
31	Employés of the Bombay, Baroda and Central India Railway and the Great Indian Peninsula Railway except those under the audit of the Audit Officer, Railway Collieries, Calcutta.	Income-tax Officer, Salary Branch, Bombay City.	Assistant Commissioner of Income-tax, B. Division, Bombay City.	Commissioner of Income-tax, Bombay.
32	Government servants under the audit of the Deputy Accountant-General, Posts and Telegraphs, Nagpur.	Income-tax Officer, Salary Circle, Nagpur.	Assistant Commissioner of Income-tax, Southern Charge, Nagpur.	Commissioner of Income-tax, Central and United Provinces.
33	Employés of the Eastern Bengal Railway.	Income-tax Officer, Railway and Miscellaneous Salaries Circle, Calcutta.	Assistant Commissioner of Income-tax, Calcutta.	Commissioner of Income-tax, Bengal.
34	Persons not resident in British India who apply for refund of income-tax under section 48 of the Indian Income-tax Act, 1922.	Income-tax, Officer, Non-Residents Refund Circle, Bombay.	Assistant Commissioner of Income-tax, A Division, Bombay.	Commissioner of Income-tax, Bombay.

SCHEDULE—*contd*

Serial No.	Persons	Officer appointed to perform the functions of—		
		Income tax Officer	*Assistant* Commissioner of Income tax.	*Commissioner of* Income-tax.
1	2	3	4	5
35	Persons not resident in British India with income arising in more than one province and assessed direct, and not through statutory agents under section 43 of the Indian Income tax Act, 1922	Income tax, Officer, Non Residents Refund Circle, Bombay	Assistant Commissioner of Income tax, A Division Bombay	Commissioner of Income-tax, Bombay
36	Persons not resident in British India assessed through statutory agents under section 43 of the Indian Income tax Act, 1922 whether their income arises in a single province or in more than one province	Income tax Officer of the District in which the Statutory agent carries on the business by reason of which income tax is chargeable in his name under section 42, or where he resides as the case may be	The Assistant Commissioner who has been invest d with power to hear appeals against the decisions of the Income tax Officer referred to in column 3	Commissioner of Income tax of the province concerned
37	Persons not resident in British India who are chargeable to income tax by assessment whether through statutory agents or direct and who apply for refund under section 48 A of the Income tax Act 1922	Income tax Officer of the District or Circl in which the applicant is chargeable by assessment	Do	Do.
38	Persons not resident in British India who are not chargeable to income tax by assessment and who apply for re fun under section 48A or under section 49 of the Indian Income tax Act, 1922 or under any Notification issued by Government under section 60 (1) of the said Act providing for relief on account of double payment of income tax	Income tax Officer, Non Residents Refund Circle, Bombay	Assistant Commissioner of Income tax A Division Bombay City	Commissioner o Income tax Bombay

SCHEDULE—*contd.*

Serial No.	Persons.	Officer appointed to perform the functions of— Income-tax Officer.	Assistant Commissioner of Income-tax.	Commissioner of Income-tax.
1	2	3	4	5
39	Pensioners who draw their pensions in the United Kingdom and reside in Indian States.	Income-tax Officer, Non-Residents Refund Circle, Bombay.	Assistant Commissioner of Income-tax, A Division, Bombay City.	Commissioner of Income-tax, Bombay.
40	Pensioners who draw their pensions through Post Offices in Indian States and reside in those States.	Do.	Do.	Do.
41	Religious and charitable institutions outside British India not liable to income-tax under section 4 (3) (i) and (ii) of the Indian Income-tax Act applying for refund of tax deducted at source on interest on securities or for exemption certificates in respect thereof.	Do.	..	Do.
42	"Thana Funds" administered by Political Agents in Kathiawar.	Do.	..	Do.
43	Local or Thana Funds administered by Government officers in Indian States or in British administered areas in those States which are either not liable to income-tax or have been exempted under section 60 of the Act when application is made on their behalf for refund of tax deducted at source on interest on securities or for exemption certificates in respect thereof.	Do.	..	Do.

SCHEDULE—*contd*

Serial No	Persons	Officer appointed to perform the functions of— Income tax Officer	Assistant Commissioner of Income tax	Commissioner of Income tax
1	2	3	4	5
44	All person assessed under section 44C	Income tax Officer Non residents Refunds Circle, Bombay	Assistant Commissioner of Income tax A Division, Bombay City	Commissioner of Income tax, Bombay
45	Employés of the American United Presbyterian Mission, residing in the United Provinces in the Punjab and the North West Frontier Province	Income tax Officer, Gujranwala	Assistant Commissioner of Income tax, Lahore	Commissioner of Income tax, Punjab
46	Employés of the Church Missionary Society, Church of England Zenana Missionary Society and Church and Mission of Central Council of the Church Missionary Society residing in the Punjab, North West Frontier Provinces, Baluchistan and Sind	Income tax Officer, Lahore	Do	Do
47	Employes of all Railway Collieries who are under the audit of the Audit Officer, Railway Collieries Calcutta	Income tax Officer, Railways and Miscellaneous Salaries Circle, Calcutta	Assistant Commissioner of Income tax Calcutta	Commissioner of Income tax, Bengal
48	All employés in the Posts and Telegraphs Department under the Audit of the two Deputy Accountants General Posts and Telegraphs (Postal and Telegraph Branches) Calcutta	Do	Do	Do

SCHEDULE—*contd.*

Serial No.	Persons.	Officer appointed to perform the functions of— Income-tax Officer.	Assistant Commissioner of Income-tax.	Commissioner of Income-tax.
1	2	3	4	5
49	Employés of the India General Navigation and Railway Company, Ltd., and River Steam Navigation Company, Ltd., working in Bengal, Bihar, Orissa and Assam, except those who carry on business in addition.	Income-tax Officer, District V. A, Calcutta.	Assistant Commissioner of Income-tax, Calcutta.	Commissioner of Income-tax, Bengal.
50	Employés of W. T. Henley's Telegraph Works Company Limited, stationed at Bombay, Karachi, Lahore. Delhi and Madras.	Do.	Do.	Do.
51	Government servants under the audit of the Accountant-General, Bihar.	Income-tax Officer, Salaries Circle, Ranchi.	Assistant Commissioner of Income-tax, Southern Range Purulia.	Commissioner of Income-tax, Bihar and Orissa.
52	Government pensioners under the audit of the Accountant-General, Bihar.	Do.	Do.	Do.
53	Employés of the Tin Plate Company of India, Ltd., Golmuri (near Jamshedpur).	Do.	Do.	Do.
54	Employés of the Tata Iron and Steel Company at Jamshedpur	Do.	Do.	Do.

SCHEDULE—*contd*

Serial No.	Persons	Officer appointed to perform the functions of—		
		Income tax Officer	Assistant Commissioner of Income tax	Commissioner of Income tax
1	2	3	4	5
55	Employés of the European Mental Hospital, Ranchi	Income tax Officer, Salaries Circle, Ranchi	Assistant Commissioner of Income tax Southern Range, Purulia	Commissioner of Income tax, Bihar and Orissa
56	Employés of the Indian Mental Hospital, Ranchi	Do	Do	Do.
57	Employés of the Lac Research Institute, Namkum (near Ranchi)	Do	Do	Do.
58	Government servants and pensioners under the audit of the Comptroller, Orissa	Income tax Officer, Cuttack	Do	Do
59	Employés of the Rajputana Minerals Company, Ltd	Income tax Officer, Salaries, Bombay	Assistant Commissioner of Income tax, B Division, Bombay City	Commissioner of Income tax, Bombay
60	European Staff of Messrs Volkart Bros, working in the Punjab and Sind	Income tax Officer, B Division, Karachi	Assistant Commissioner of Income tax Sind	Do
61	Military employees under the audit of the Controller of Military Accounts Western Command, Karachi.	Assistant Income tax Officer, Karachi	Do	Do

(*e*) The Chief Commissioner of the Andaman and Nicobar Islands is the Commissioner of Income-tax for those Islands.

(*f*) The Income-tax Officer within whose jurisdiction the head office for an area of any company or other employer is located is appointed as the Income-tax Officer to receive, in respect of the income of an employee of such company or employer who is employed in a place that falls outside that Income-tax Officer's jurisdiction, the statement referred to in rule 11 of the Indian Income-tax Rules, 1922:

Provided that such company or other employer has applied for and obtained the permission of the Commissioner of Income-tax to pay from the head office for an area the amounts of tax deducted from the pay of the employees who reside elsewhere and to submit the said statement to the said Income-tax Officer, and has agreed to prepare and submit along with the said statement a separate extract thereof for each other place in which an employee works.

36. *Salaries.* (*Section 7*).—(*i*) The income taxable under this head includes not only fixed salaries or wages and annuities or pensions, but also any fees, commissions, perquisites or profits received in lieu of, or in addition to salaries or wages which are paid to an employé by or on behalf of any employer. Under the Act of 1918 the income chargeable under this head applied only to "salaries" in the above sense when paid by or on behalf of Government, a local authority or company, any other public body or association or by or on behalf of any private employer who had entered into an agreement with the Income-tax Officer to recover the tax on behalf of Government, but under the present Act it applies to all salaries paid by or on behalf of every private employer, the obligation to deduct income-tax from salaries being under section 18 (*2*) of the Act an obligation on every employer.

(*ii*) A payment made on retirement, etc., to an employee from a private Provident Fund, that has been formed into a genuine Trust, cannot be regarded as a payment of salary within the meaning of section 7 (*1*) of the Indian Income-tax Act, XI-1922, because (for one thing) the trust is not the employee's employer. Such a payment is therefore not liable to taxation by deduction of tax at source.

(*iii*) Accumulated balances when paid to employees of *recognised* provident funds are however exempt from tax if they satisfy the provisions of section 58-G (*vide* paragraph 24).

(*iv*) For the interpretation of "salary" for the purposes of recognised provident funds, see paragraph 29.

(*v*) Fees (including retaining fees) paid to Government pleaders and Public Prosecutors are not 'salaries' within the meaning of section 7 of the Act, but "professional earnings" within the meaning of section 11 of the Act.

(*vi*) The proviso to sub section (*1*) applies only to compulsory deductions made under the authority of Government and not to compulsory deductions made by other employers (see paragraphs 23 and 24) The amount exempted under this proviso has how ever to be taken into account under section 16 (*1*) in computing the total income of an assessee for the purposes of determining whether he is liable to tax and the rate at which he is to be assessed An assessee for example who has a salary of Rs 180 per mensem or Rs 2 160 per annum and from whose salary a compulsory deduc tion is made by the authority of Government of Rs 300 per annum of the nature referred to in this proviso is liable to pay income tax on Rs 1 860 at the rate applicable to an income of Rs 2 160

(*vii*) Under section 58 of the Act this proviso does not apply to super tax that is no allowance of this kind is made for super tax purposes

(*viii*) As regards perquisites see paragraph 33

(*ix*) Rewards for passing language examinations are exempt under section 4 (3) (*vii*) of the Act unless by the conditions of his employment the assessee is compelled to pass the examination See also paragraph 33

(*x*) Honoraria or fees paid to Government servants by local bodies or private persons companies etc for professional work the whole of which are in the first instance credited to Government after which the whole or part is drawn under proper sanction by the Government servant concerned on a bill should be taxed as salary by deduction at source They are obviously fees commis sions or perquisites received in addition to salary and paid by or on behalf of Government [section 7 (*1*)]

(*xi*) For classes or portions of salaries which are entirely exempt from tax see paragraph 17

(*xii*) Income under this head is included in the income of the year in which it is received irrespective of the period in respect of which it was earned with the exception that where an officer of Government or any other employee takes an advance of pay the tax is not chargeable on the advance but the tax is charged on the full salary of the month in which the advance is recovered by deductions without any regard to the deduction In cases where the payment of an assessee s salary in advance or in arrears makes his income assessable at a rate higher than that at which it would otherwise have been assessed he may be granted relief under section 60 (*2*)

(*xiii*) A portion of a salary withheld under the orders of a Court is liable to tax

37. *Salaries paid in India but outside British India.* [*Section* 7 (2)].—(*i*) See paragraph 1. This sub-section makes chargeable, under this head, salaries paid from Indian revenues to Government employés in any part of India and salaries paid by a local authority established in exercise of the powers of the Central Government. All servants of Government or of such local authorities are, therefore, liable to pay tax on their salaries if they are employed in any part of India and irrespective of their nationality.

(*ii*) The words "or any servant of His Majesty" in this sub-section were inserted in the Act of 1918, so as to bring all servants of the Crown, whether British subjects or not within the purview of this sub-section, on the ground that it seemed unnecessary to give to persons who were not British subjects specially favourable treatment which was not accorded to British subjects.

(*iii*) The pay of officers whose services have been lent to, and whose salaries are paid by, Indian States are not chargeable to income-tax under this section unless they are drawn or received in British India; but the leave allowance and pensions of such officers are chargeable to income-tax unless covered by any of the exemptions in paragraph 17. The Government of India recover contributions at fixed rates from the Indian States to meet the cost of leave allowances and pensions of officers in foreign service and make themselves responsible for paying the leave allowances and pensions of their employés earned in foreign service. The portion of salaries of Government officers serving in Indian States, which is paid in the first instance by the Government of India but is subsequently recovered from the State concerned, is not liable to income-tax.

38. *Salaries, etc., paid outside India.*—(*i*) Under exemptions Nos. 20-21 & 24 quoted in paragraph 17, leave allowances or salaries paid in the United Kingdom to, or drawn from any Colonial treasury by, officers of Government on leave or duty in the United Kingdom or in a Colony and the pensions of officers of Government residing out of India, which are paid in the United Kingdom or are drawn from any Colonial treasury, are exempt from tax. Similarly under exemption 22 and 26 leave salaries or leave allowances paid in the United Kingdom or in a Colony to officers of local authorities or to employés of companies or of private employers on leave in the United Kingdom or in a Colony and pensions paid in the United Kingdom or in a Colony to officers of local authorities, or to employés of companies or of private employers, provided such officers or employés are residing out of India, are exempt from tax. Vacation salaries paid in the United Kingdom or in a Colony to Judges of High Courts or of Chief Courts, to Judicial Commissioners or to other officers of Government when on vacation therein are also exempt from tax—*vide* exemption No. 23 in paragraph 17.

(ii) Pay and allowances drawn by officers from the Indian revenues which are earned by them by service outside India are not liable to the tax unless they are drawn or received in India

39. *Interest on Securities* (*Section* 8) —(i) As regards sterling securities, see paragraph 16

(ii) In computing the income from interest on securities an allowance should be made of any commission deducted by a banker for realising such interest on behalf of the assessee

(iii) The interest chargeable under the section is the interest only on securities of the Central Government or of a Provincial Government or on debentures or other securities for money issued by or on behalf of a local authority or company It does not include the interest on debentures issued by firms, associations, clubs, or individuals the interest on which is chargeable under section 10 or 12

(iv) With reference to the second proviso the Government of India War Bonds, 1920, 1921, 1922, 1923, 1924 and 1928, 5 per cent loan 1945 55, Five-year 6 per cent Bonds, 1926, Five year 6 per cent Bonds, 1927, Ten-year 6 per cent Bonds, 1930 Ten-year 6 per cent Bonds, 1931, Ten year 6 per cent Bonds, 1932, and Ten year 5 per cent Bonds, 1933, have been issued income-tax free

(v) The third proviso to this section prescribes that where a Provincial Government issues a security as income-tax free, the income-tax on the interest thereon shall be payable by that Provincial Government So far as investors are concerned, therefore, securities issued income tax free, whether by the Central Government or by Provincial Governments, stand on exactly the same footing, that is, income-tax is not payable on the interest received therefrom by the assessee, but the interest received therefrom is taken into account under section 16 (*1*) of the Act in determining the total income of the assessee for the purpose of deciding whether he is liable to income tax and also for determining the rate at which he shall pay income-tax on his other income It should be included in the total income of the year in which it is paid The same remarks apply to Government securities purchased through the Post Office and held in the custody of the Accountant General, Posts and Telegraphs (*see* paragraph 18) Super-tax is, however, payable by the recipient in respect of such interest, since, under section 58 of the Act, the provisos to this section do not apply to super-tax

(vi) For interest on other securities, which are entirely exempt from tax, see paragraphs 17 (27)

(vii) For interest on securities held by Provident Funds etc, see paragraph 32

(*viii*) The interest on securities held by a Co-operative Society is liable to income-tax (see paragraph 18).

(*ix*) Where a bank or other concern engaged in business similar to that of a Bank receives deposits of loans in the course of its business and invests the money so borrowed as occasion arises, it should be allowed in computing its liability to income-tax to set off the entire interest on such borrowings against its entire income liable to tax. No attempt should be made, for example, to allocate a proportion of the borrowed money to investments in tax-free securities and to set off the interest of such proportion against the tax-free securities instead of against the taxable income.

(*x*) But (as an exception to the foregoing) in the rare cases in which there is definite proof (not a mere inference) that a certain sum was specially borrowed by a Bank or similar concern for the purpose of investment in tax-free securities and has been so invested, the interest on the money so borrowed should be set off against the interest on the tax-free securities and not against the income liable to income-tax.

(*xi*) Assessees other than Banks or similar concerns may set off interest on money borrowed specifically for investment in taxable securities or shares, and so invested against their income liable to tax taken as a whole, and not merely against the interest on such securities or the dividends on such shares. In all such cases there must be clear proof and not a mere inference that the money was specifically borrowed for such investment and actually invested. They cannot be allowed to set off against their income liable to tax interest on money borrowed for investment in tax-free securities and so invested.

(*xii*) Income-tax (but not super-tax) in respect of income chargeable under this head is deducted at the source [Section 18 (3)].

40. *Property.* (*Section 9*).—(*i*) The tax is payable under this head in respect of property consisting of any building or lands appurtenant to a building by the owner of such property. Lands not attached to a building are not chargeable under this section. The income derived from vacant lands let out in urban areas for the purpose, *e.g.*, of storing materials is chargeable to the tax under section 12.

(*ii*) Buildings or lands occupied by the owner thereof for the purposes of his own business are not liable to the tax under this head. This particular provision was inserted in order to avoid the unnecessary complications in previous Acts under which the annual value of such property was liable to the tax under this head and a corresponding deduction was allowed to the owner under the head "business" (Section 10).

(iii) It is to be noted that it is only the owner who is liable to pay tax under this head Where a person derives an income from house property which he holds on lease, such income is chargeable under section 12— other sources''

41. *Property—Definition of annual value* [*Section 9(2)*]—The tax is, under the head ' property , chargeable in respect not of any actual rental or cash received, but of the ' *bonâ fide* annual value The *bonâ fide* annual value of a building is the full market value at which the building could be let from year to year irrespective of any charges by way of municipal rates or taxes thereon It therefore differs from the actual annual rent payable on a long term lease or the actual rent payable on a yearly lease under a privileged rental or with tenant s liability to pay owner s rates or taxes Only limitation on taking the full market value is that in cases where the property is in the occupation of the owner for the purposes of his own residence the annual value' is restricted to a maximum of 10 per cent of the total income'' of the owner The phrase ''total income'' in this definition has the meaning given to it in section 2 *(15)* of the Act, *viz* income profits and gains of such owner from all sources to which the Act applies and, therefore, does not include income derived from any of the sources specified in section 4 (3) of the Act (such as, for example, ''agricultural income''), which are exempt from the tax

42. *Deductions allowed in respect of property* —(i) It is to be particularly noted that, as stated in paragraph 69 no deductions are permissible on account of any municipal or local rates or taxes in respect of property Nor can any allowance be made for brokerage for raising loans on mortgages and legal charges relating thereto since such charges are in the nature of capital charges The only deductions from the ''annual value'' permissible are those specified in section 9 *(1)*

(ii) Where an assessee is the owner of several items of property within the meaning of section 9 (1), the allowance admissible under that section should be worked out with reference to the annual valuation of the property taken as a whole and not item by item

(iii) Ordinarily, no expenditure is allowed as a deduction in calculating income for the purposes of the Act except such expenditure as has been incurred solely for the purpose of earning that income Under clause (iv) of sub section (1) of section 9, there is no such restriction, so that a property owner is entitled to set off, against the annual value of property, the interest payable on a mortgage or other charge upon the property irrespective of the purpose for which the encumbrance was created

(*iv*) The proviso to sub-section (*1*) of section 9 has no application to interest on money borrowed for business purposes even though such money may have been borrowed on the security of the assessee's property.

43. *Proof of expenditure where deductions are claimed in respect of "property".* [*Section 9(1).*] The allowance on account of repairs [*viz.*, one-sixth of the annual value in the case specified in clause (*i*), and in the case specified in sub-clause (*ii*), the amount permitted by that clause] is a fixed allowance which should be granted without proof of the actual expenditure in any year and irrespective of the amount of such expenditure. It should also be allowed in full even when an allowance is given for "vacancy" under section 9 (*1*) (*vii*). The allowances on account of the annual premium paid to insure the property against risk of damage or destruction or on account of annual charge or ground-rent of land revenue or of collection charges must be supported by proof of the actual expenditure. Interest that has fallen due on a mortgage or capital borrowed for acquiring the property, should, however, be allowed as a deduction even though it may not have been actually paid.

44. *Property. Insurance deductions.* [*Section 9(1) (iii)*].—The only insurance deduction permissible is the amount of the annual premium paid to insure the property against risk of damage or destruction. In some cases owners insure against loss of rent. Where an owner asks for an allowance on account of the annual premium for such insurance it should be allowed if such owner agrees to pay tax on any amount recovered from the insurance company. Where no such allowance is claimed or allowed tax is not to be charged on the amount recovered from the insurance company.

45. *Property. "Charge".* [*Section 9 (1) (iv).*]—Deduction should be allowed under this sub-section of (1) any interest on a mortgage or other capital charge with which the property is encumbered (2) any ground rent to which it is subject and (3) the amount of any interest payable on capital borrowed for the purpose of acquiring the property even if such interest payments do not take the form of charges attached to the property itself.

46. *Property, Collection charges.* [*Section 9 (1) (vi).*]—(*i*) As regards collection charges rule 7 fixes 6 per cent. of the annual value as the maximum amount permissible. Where a house has remained vacant for a period, this maximum, of course, would never be reached and in many cases there will be no collection charges. The *maximum* amount permissible should be reduced in all cases where a house has remained vacant for a period to 6 per cent. of the annual value as diminished by the amount allowed in respect of vacancies. Proof must always be given of the collection

charges having been incurred Rule 7 simply provides that, where there is proof of collection charges, such charges may be allowed subject to the provision that in no case shall the amount allowed on account of collection charges exceed 6 per cent of the annual value

(ii) Legal expenses incurred in recovering rents from tenants should be treated as a permissible deduction included in collection charges subject to the following conditions —

(a) Only net legal expenses, that is, expenses after deducting any costs recovered from the opposite party will be deducted

(b) The actual expenses, incurred in excess of the costs deducted will be allowed in the year in which the decree is passed a further allowance for costs proved to be irrecoverable will be given later, if necessary

(c) The total allowance for collection charges including legal expenses allowed must of course, not exceed the statutory 6 per cent

47. *Property Deduction for unrealised rent* —Unrealised rent on any property is exempt from income tax and is also excluded in computing the total income of an assessee, provided that—

(a) the tenancy is *bonâ fide*,

(b) the defaulting tenant has vacated, or steps have been taken to compel him to vacate, the property,

(c) the defaulting tenant is not in occupation of other property of the assessee and

(d) the assessee has taken all reasonable steps to institute legal proceedings for the recovery of the unpaid rent

48. *Property Allowance in respect of vacancies* [*Section 9 (1) (vii)*]—No fixed rule can be laid down regarding the allowance to be granted in respect of vacancies under clause (*vii*) Property is taxed on the 'annual value ' which as noted above, is the commercial rent of a house—the rent which it would fetch if let by the year Where the property is let at an annual rental corresponding to the annual value it would be fair to allow a proportionate deduction corresponding to the period of the vacancy, that is, if it were vacant for half the year, half the annual value might be allowed Property may be let on short lease for a period less than one year and fetch a rent for that period far in excess of what has been fixed as the "annual value" and in such cases no allowance obviously can be given Where a claim is made on account of vacancies the owner should be asked to state what the actual rental was that he had received for the period of the year

during which the property was let and the amount allowed on account of vacancies should, under no circumstances, exceed the amount by which the rent received falls short of the annual value. There can, of course, be no allowance in connection with any property which is reserved by the owner for his private occupation. A claim on account of vacancies can only be entertained in connection with property that is usually let.

49. *Property. Limitation of total allowances.* [*Section 9 (1).*]—The proviso to section 9 (*1*), that the aggregate of the allowances made under that sub-section shall in no case exceed the annual value, was inserted owing to the new provision in section 24 providing for the set-off of losses under one head against income, profits or gains under any other head. Instances have occurred of buildings situated in extensive grounds or on valuable sites being mortgaged for sums the interest on which is far in excess of the "annual value". The result of this proviso is that the annual value of the property belonging to an assessee can in no case be reduced to a *minus* sum owing to the allowances, and that there can be no loss under this head to be set against income, profits or gains under any other head.

50. *Method of accounting for assessing income, profits and gains under sections 10, 11 and 12. (See section 13.)*—(*i*) Owing to a High Court ruling, referred to in paragraph 13, regarding the definition of the word "income" the provisions in the present Act have been so worded as to make it clear that as regards income, profits or gains from business, professional earnings or the other sources mentioned in section 12, no uniform method of accounting is prescribed for all tax-payers, and that every tax-payer may, so far as is possible, adopt such form and system of accounting as is best suited for his purposes. The only restrictions are that the method adopted must be one that clearly reflects the income of the assessee in respect of the fixed period of "the previous year" and that it is the one regularly employed by him for the purposes of his business. If the tax-payer does not regularly employ a method of accounting which clearly reflects his income for the "previous year" the computation will be made in such manner as in the opinion of the Income-tax Officer does clearly reflect it.

(*ii*) There are two main systems of keeping accounts. There is, firstly, the cash basis system, where a record is kept of actual receipts and actual payments, entries being made only when money is actually collected or disbursed. It is probably unusual for a trader to calculate his profits on this system. If he does so, it must be remembered that the difference between the value of his opening and closing stocks must be taken into account in computing the year's profit, in order to secure a proper and even distribution of his profits over a series of years. There is, secondly,

the mercantile accountancy system under which a profit and loss account is maintained and a comparison is made of the value of the stock in hand at the beginning and at the end of each year Under this latter system entries are made in the accounts on the date not of receipt of money or expenditure of money, but on the date of transactions irrespective of the date of payment When goods are sold, for example an entry is made at once on the receipt side of the account, although no cash may be received at the time in payment of such goods and an entry is similarly made on the debt side when a liability is incurred although payment on account of such liability may not be made at the time It will be the method of accounting adopted for or by the tax payer, therefore, that will determine the period within which any item of gross revenue or any deduction therefrom is to be accounted for, and which will determine whether particular allowances are or are not permissible

(iii) It is for this reason that the Act does not contain a complete statement of the deductions or allowances that are permissible or not permissible in working out business profits or professional earnings, since certain allowances or deductions can only occur where the mercantile accountancy system is adopted There can, for example, be no allowance for "bad debts" where the cash basis is the method of accountancy employed Under the mercantile accountancy system, as noted above, an entry is made on the receipt side when a sale is concluded, although the money on account of such a sale has not been paid and in making up the accounts at the end of the year such entries are treated as receipts, and the tax is levied on these "book profits" It may happen that some of these "book profits" cannot be recovered, they are written off as "bad debts" when found to be irrecoverable and since such "book profits" have been included in the income assessed to income-tax, the "bad debts" must be written off against the "book profits" in the year in which they are written off in the accounts as irrecoverable Where the cash system is adopted, there can be no "bad debts"

(iv) A bad debt or irrecoverable loan cannot be allowed as a deduction unless :—

(a) the assessee has writen it off his accounts,

(b) it has actually become bad or irrecoverable, and

(c) it actually became so *in the "previous year"*.

(v) The word "irrecoverable" in the term "irrecoverable loan" should be given a wider sense than its technical legal meaning

(vi) The fact that a loan or other debt has "
coverable" is not conclusive evidence that it is
able or "bad" But a loan or other debt that

irrecoverable should ordinarily be treated as *actually* irrecoverable or "bad", unless the assessee proves it to be otherwise.

(*vii*) The contention often put forward by assessees, or their representatives that if a debt or loan is written off it can no longer be recovered by suit, should not be admitted because a creditor who has written off a debt or loan in his accounts as bad or irrecoverable is not any way debarred from suing for its recovery unless the act of writing off is communicated to the debtor or it is agreed between the creditor and debtor that a certain amount shall be paid and accepted in full satisfaction.

(*viii*) Again, it will be the method of accounting that will determine the particular year in which allowances common to both systems of keeping accounts may be made. In sub-section (*2*) of section 10 of the Act provision is made for allowances on account of rent paid, interest paid on capital borrowed, the amount of premium paid in respect of certain classes of insurance, amount paid on account of current repairs, etc., and sub-section (*3*) of section 10 states that the word "paid" means "actually paid" or "incurred" according to the method of accounting upon the basis of which profits or gains are computed, *i.e.*, where the cash basis is adopted, it will be the date of actual payment that will determine the year in which such allowances may be made, whereas if the mercantile accountancy system is adopted, the allowances can be claimed in the year in which the liability to pay occurred.

51. *Method of accounting "regularly employed". (Section 13.)*—(*i*) The method of accounting regularly employed by an assessee for the purposes of his business should, so far as possible, be the method adopted for working out his profits for income-tax purposes; but the Income-tax Officer has to decide whether that method of accounting is the one regularly employed for the purposes of the assessee's business and whether it is such as to reflect clearly the taxable profits for the "previous year". In most cases this should cause no difficulty. Doubtful cases should be referred to higher authorities. As an example of the principles to be followed in settling doubtful cases two instances of such cases are given. It is the practice amongst certain merchants to prepare their accounts on the basis of the mercantile accountancy system in respect of transactions between themselves and members of their own community, but on the basis of cash payments in the case of transactions between themselves and their customers. Provided that the same system is continuously employed, there appears to be no reason why this particular practice should not be considered to be a "method of accounting regularly employed". Again there are cases where the various branches of a business are only closed once in three or five years and where the accounts of the branches are not annually incorporated in the headquarters

business s accounts In such a case it might be possible to assess either on the average annual profits of the branches as disclosed by the accounts last filed or on the actual profits brought to account owing to particular branches closing in particular years

(ii) The cases in which an assessee desires to change his accounting system should be rare and where such a request is made, the Income tax Officer in considering it should, as in the similar case of a demand for a change in the previous year' (paragraph 6), if he is prepared to allow the change, take steps to secure that no profits escape taxation on account of the change While section 13 leaves it to the discretion of the Income tax Officer to decide whether a particular system of accounting should be accepted or whether a change in the system of accounting should be allowed, the discretion of the Income tax Officer in this matter can be questioned in the course of an appeal against an assessment under section 30, i e , it may be made one of the grounds of appeal in contesting the assessment of the profits

52 *Business* (*Section 10*)—(i) 'Any business" in sub section (1) of the section means ' any business or businesses'

(ii) It was laid down in Inland Revenue Commissioner *versus* Maxse (XII, English Tax Cases, page 41) that ' a profession involves the idea of an occupation requiring purely intellectual skill or manual skill controlled by the intellectual skill of the operator as distinguished from an occupation" (i e a business or trade) "which is substantially the production or sale or arrangements for the production or sale of commodities" In this view a firm of architects or accountants or engineers cannot be regarded as carrying on a trade and should not be assessed as though they were carrying on a business

53 *Business deductions General* —While, as stated in paragraph 50, it is not possible, owing to the variety of accounting systems, to prescribe exhaustive lists of deductions that are or are not permissible in the case of all businesses, section 10 (2) contains a list of allowances that are permissible in the case of all businesses The following is a list of the deductions that are not permissible in the case of any business whatever the system of accounting may be that is adopted —

(a) Reserves for "bad debts" or for "provident" or other funds or any other purpose such as the equalisation of profits or dividends

(b) Expenditure of the nature of charity or presents,

(c) Expenditure of the nature of capital,

(d) Cost of additions to, or alterations, extensions or improvements of, any of the assets of a business

(e) Sums paid on account of income-tax or super-tax in India or elsewhere or any tax levied by any authority other than land revenue, local rates or municipal taxes in respect of the portion of the premises only which is used for the purposes of the business. The question whether a salary paid to a partner is an admissible deduction for purposes of income-tax, or in other words the question whether a so-called "salary" paid to a "partner" is really a salary or simply an allocation of profit, is a question of fact to be determined in each case, with reference to the circumstances (see Electrical and Dental Stores *versus* Commissioner of Income-tax, Punjab, V, Srinivasan's Tax Cases, pages 254-257—Lahore High Court);

(*f*) Interest on the proprietors' or partners' capital including interest on reserve or other funds, (*cf.* Allahabad High Court Case No. 223 of 1923, in the matter of Lalla Mal Hardeo Das Cotton Spinning Mill Co., of Hathras, I, Srinivasan's Tax Cases, page 266);

(*g*) Private or personal expenses of the assessee;

(*h*) Rental value of property owned and occupied by the owner of a business for the purposes of the business;

(*i*) Losses sustained in former years;

(*j*) Any loss recoverable under an insurance or a contract of indemnity;

(*k*) Depreciation of any of the assets of the business other than the depreciation allowed under section 10 (2) (*vi*);

(*l*) Any sums paid on account of any cess, rate or tax levied on the profits or gains of any business or assessed at a proportion of or otherwise on the basis of any such profits or gains;

(*m*) Any expenditure of any kind which is not incurred solely for the purpose of earning the profits.

54. *Business deductions. Irrecoverable Loans.* [*Section 10 (2).*]—(*i*) Where an assessment is made of profits or income from a banking or money-lending business, loans which cannot be recovered should be deducted from the assessed profits of such business at the time when such loans can be definitely proved to be irrecoverable. For example, if a banker has lent out 5 lakhs of rupees and received Rs. 50,000 as interest but has during the same year lost an irrecoverable loan of Rs. 25,000, he should be assessed on Rs. 25,000. Similarly, if the same banker receiving Rs. 50,000 as interest on his loans suffers a loss of an irrecoverable loan

amounting to one lakh during the same year, the income to be assessed to income tax from the money lending business in that year will be *nil* These examples will apply whether the assessee had previously been assessed to income tax or not

(ii) This instruction will also apply to the assessment of other traders where loans have been made in connection with the business and in which the loans are of the nature of the business and the loss is a true trading loss

(iii) The irrecoverable loans in the sense referred to in this paragraph are sometimes confused with the bad debts described in paragraph 50 but they are of a totally different nature Money lent out on interest is the stock in trade of a money lender or banker and the loss of such stock in trade can clearly be regarded as a trading loss like the loss of the stock in trade of any other trader where the loss is not covered by insurance In settling claims of this nature the question has always to be considered whether money lending is or is not a part of the business of the trader in question The investment of savings or occasional loans made to acquaintances cannot be considered to be loans made in the course of trading

55 *Allowance on account of rent of business premises* [*Section 10* (2) (i)]—The allowance referred to in this clause is only in respect of that portion of the premises in which the business is carried on and the same limitation applies to all allowances relating to premises or buildings in clauses (*ii*) (*iv*) (*v*) (*vi*) and (*viii*) Where premises are owned by the owner of the business of course no allowance on account of rent is permissible since the owner is not liable to pay tax on the annual value of such premises under section 9 Where the trader resides in a part of the business premises the full rental cannot be set against the profits and the Income tax Officer must in each case determine the portion of the rent that may so be set off

56 *Allowances on account of repairs of business premises* —(i) Where the assessee is himself the owner of his business premises he is allowed as a deduction the amount spent on repairs each year on the portion of the premises used for the purposes of the business under section 10 (2) (v) where he is the tenant of the premises he is under section 10 (2) (ii) allowed the amount expended by him on repairs if his lease requires him to execute repairs Where the premises are occupied partly as a residence and partly for the purposes of a business the same proportion of the disbursements on repairs should be permitted to be deducted as is taken in calculating the rent permissible under section 10 (2) (i)

(ii) The phrase current repairs in section 10 sub section (2) (v) should be interpreted to mean such repairs required to keep building, machinery plant and furniture in serviceable condition,

as are rendered necessary by ordinary wear and tear (as opposed to accidental or wilful damage or other unusual causes) and are of their nature recurrent (supposing that the owner displays reasonable care and prudence in keeping the asset, whatever it may be, in good order) at comparatively short intervals—say, at least, once in two or three years. It also includes minor replacements (in respect of which it would be absurd to expect an entry to be made in a block account or similar record or in any records maintained for the purposes of calculating depreciation) and also mere adjustments of existing parts and in the case of machinery or plant, any replacement or renewal which is not so extensive as to destroy its identity.

(*iii*) Expenditure on anything that, if it had been done when the asset was new, would have increased its capital value should be regarded as capital expenditure.

57. *Business—Allowance in respect of borrowed capital.* [*Section 10* (*2*) (*iii*).]—(*i*) The allowance under this clause can only be given where payment of the interest is not in any way dependent on the earning of the profits. It cannot be allowed, therefore in respect of any borrowings the interest on which is not payable unless profits are earned or the interest on which varies according to the amount of the profits earned. In all cases it will be a question of fact whether the payment of interest is or is not actually dependent on the earning of profits. No allowance can be made in respect of the share capital of companies or of the capital put into a firm by the partners; but a company is entitled to an allowance of the interest paid on its debentures and a firm to an allowance of interest on money borrowed under a mortgage. On the other hand, a firm alleging that it has no independent capital and that it is working only on capital lent by the partners at a definite rate of interest which must be deducted from the earnings of the firm before its profits can be declared, is not entitled to allowance under this section unless definite proof is given that a particular partner has made a legal loan to the firm, *i.e.*, a loan under an instrument on which he can sue and under which interest at a fixed rate is to be paid to him annually irrespective of the earning of any profits. (*Cf.* Allahabad High Court, Case No. 223 of 1923, in the matter of Lalla Mal Hardeo Das Cotton Spinning Mill Co., of Hathras I, Srinivasan's Tax Cases, page 266). Similarly the share of profits given to Mohammedan depositors in lieu of interest on borrowed capital cannot be allowed as a business expense.

(*ii*) No rule has been made under the "explanation" to this clause defining what Mutual Benefit Societies are to have the benefit of the "explanation". It has been found that the "explanation", if applied, is likely to give more trouble to the societies

than the present procedure Executive instructions have, however, been issued that in the cases of such societies (which appear to be peculiar to the Madras Presidency) where the taxable income is Rs 5,000 or under and where the "shareholders" or "subscribers" reside within the limits of the circle of one Income tax Officer, the company or society should not be assessed direct to income tax but the principal officer should furnish the Income tax Officer with a list of the amounts paid out to subscribers showing the original subscriptions or capital invested and the interest there on and the Income tax Officer should ascertain what particular recipients of these payments are liable to tax and should add the amount of interest that they have received to the income on which they would otherwise have been assessed, that is, he should assess the recipients direct

58. *Business—Allowances in respect of insurance premia* [*Section 10* (*2*) (*iv*)]—(*i*) The allowances under this clause are restricted to insurance policies taken out against the risk of damage or destruction of buildings, machinery, plant, furniture, stocks or stores, used for the purposes of the particular business of which the profits or gains are being calculated and no allowance can be made on account of *premia* in regard to other insurances Further, any sums not actually expended on *premia* but merely set aside by a company or firm as an insurance fund are simply a particular description of reserve and no allowance or deduction can be given in respect of such reserves

(*ii*) The Act does not contemplate the deduction of premia on account of insurance against a loss of profit If, however, the owner, of a business elects to claim any such allowance, he should signify his intention to the Income tax Officer—and if he makes a declaration in writing, undertaking generally to pay the tax on any amounts recovered from an Insurance Company under any such policy or policies the allowance will be granted in respect of the premia for any such policies that he may have taken out not more than a month before the date of such declaration or that he may take out subsequent thereto Where no allowance is asked or allowed in respect of such policy, any sums received from the Insurance Company on account of the policy will not be liable to tax

59 *Allowances in respect of depreciation* [*Section 10*(*2*) (*vi*)]—(*i*) The allowances permissible under this clause are prescribed in rule 8 and the information that must be furnished in order to obtain an allowance is set out in rule 9 It is only the particular classes of buildings, machinery plant or furniture mentioned in rule 8 in respect of which the depreciation allowance can be claimed, and the buildings, machinery, plant or furniture for

which depreciation allowance is claimed must be used for the purposes of the particular business of which the profits or gains are being computed. No allowance can be claimed on account of depreciation, for example, of any portion of a building which is used as a residence by the assessee. Further, the buildings, etc., must be the property of the assessee. No allowance can be claimed if they are leased from others.

(ii) Buildings belonging to the owner of a business and used by him in order to house his employés are buildings used for the purpose of business if the owner charges no rent. If, however, rent is charged section 9 would apply.

(iii) When a person succeeds to a business, the depreciation allowance due to him in respect of buildings, *machinery*, etc., *taken over by him from his predecessor* should be worked out on the basis of *original cost to the successor (not on the cost to the predecessor)*. The same will apply where the person is not a *successor but merely a purchaser*. (Saraspur Mills Co., Ltd., Ahmedabad *versus* Commissioner of Income-tax, Bombay—Civil Reference No. 3 of 1931, High Court of Bombay.)

(iv) Depreciation should be allowed on the cost of setting up machinery and plant, that is, the expression "original cost" in section 10 (2) (*vi*) should be held to include the cost of freight, pay of Engineer and staff who erect the machinery, put it in working order, and carry out experiments to test it. The rates of depreciation allowance fixed in rule 8 are fixed rates for the whole of India. *Depreciation at those rates must be allowed each* year when there are sufficient profits, and only the excess of the depreciation allowance over profits can be carried forward from year to year until absorbed, and this practice must be followed whether the depreciation allowance is adjusted in the accounts of the assessee or not and irrespective of the amount shown in the accounts. It is for this reason that in the form of returns of income prescribed in rules 18 and 19 any amounts entered in the accounts of an assessee for the depreciation of any of the assets of the business must be written back as the amount allowed for income-tax purposes is the amount prescribed in the rules and not the amount entered in the books of the assessee.

(*v*) Where an assessee owns more business than one, any part of the depreciation allowance in respect of one business, that cannot be set off against the profits of the same business, owing to the profits in question being insufficient, shall be set off, if possible, against the profits for the same year of any other business or businesses owned by the assessee. Any amount of depreciation that cannot be set off against the assessee's business profits for the same year, whether he owns one business or more, shall be set off under section 24 against his income, profits or gains chargeable

with income-tax under any other head in that year. Any part of the depreciation allowance due to an assessee that cannot be set off against his income, profits or gains under all heads for the year in question, shall be carried forward to the next year under proviso (*b*) to sub-section (2) (*vi*) of Section 10 of the Act The assessee should not be allowed the *option* of either setting off unabsorbed depreciation allowance against the profits of any other business or against other heads of income, profits or gains on the one hand or carrying it forward on the other

(*vi*) This clause provides for the depreciation of furniture, but it may not suit the convenience of particular traders to ask that a depreciation account should be kept up for petty items of furniture and a depreciation allowance on account of furniture should, therefore, be granted only in cases in which it is asked for, in which event the cost of replacement should not be allowed; where such depreciation allowance is not asked for, the cost of replacement should be allowed in the year in which the furniture is replaced.

(*vii*) Whatever depreciation allowances are granted, it will be necessary to maintain an account showing the original cost to the assessee of the plant, the amount of the annual allowance, the amount of the allowances already granted and the balance still to be allowed.

(*viii*) The percentage allowance fixed in the rule for the permanent way of electric tramways only covers cases where the number of car miles per mile of track does not exceed 1,25,000 car miles per annum. Where the number of car miles per mile of track per annum exceeds 1,25,000 special terms will have to be made in each case. Similarly special consideration should be given to each case where there are special circumstances such as exceptional gradients, the compulsory use of wood paving, etc., tending to show that the car mileage does not fairly represent the wear and tear of the track. The cost of renewing concrete foundations should be allowed as a trading expense as and when incurred, provided that, if the renewed foundations are an improvement on the old ones, so much of the cost of the renewed foundations as represents such improvement should not be admitted as a trading expense. Amounts received for the old materials, whenever renewals are effected, should be credited against the cost of the renewals, and if the old materials are not disposed of at the time or are used for other purposes, their estimated value should be deducted, subject to adjustment if necessary, as and when the old materials are disposed of The percentages fixed for the depreciation of the permanent way are based upon the estimated life of a track from a consideration of the number of car miles per mile

of track, and consequently these percentages may vary in connection with the same undertaking. It must be clearly understood that the revision of the life of a track need not necessarily be deferred till the whole track is renewed, because it may become clear before that date that revision is necessary either in the direction of increasing or decreasing the average life. As regards the rate for general plant, machinery and tools, all other plant and machinery including workshop tools but excluding loose implements, office furniture and small articles which require frequent renewals (expenditure on which is allowed as a business expense against revenue), should be lumped together and the rate of 5 per cent. depreciation should be allowed thereon in addition to the cost of. repairs. No depreciation should be allowed on overhead equipment, *i.e.*, trolley wires and connections: all expenditure on maintenance and renewals should be charged as working expenses, as and when incurred.

(*ix*) The item "Below ground—All to be charged to revenue" in exception (*1*) under item 6 (Mineral oil companies)—B. (Field operations), in Rule 8 means that on the plant in question (pipes, etc.) below ground, depreciation is to be allowed at 100 per cent., so that if the profits are insufficient in any year to allow of the full 100 per cent., being written off against them the balance can be carried forward, under proviso (*b*) to section 10 (*2*) (*vi*) of the Act, to subsequent years.

(*x*) No depreciation allowances are granted to railways on account of depreciation of their rolling stock as renewal charges are allowed as a business deduction.

(*xi*) An assessee deriving income from a railway or tramway (other than an electric tramway) business may at his option require that in computing the profits or gains of such business the following allowance shall be made in lieu of the allowances specified in clauses (*v*), (*vi*) and (*vii*) of sub-section (*2*) of section 10 of the Act, namely:

The actual expenditure incurred by the assessee during the previous year on repairs, replacements, and renewals of plant, machinery, buildings and furniture which are the property of the assessee.

If he, however, has exercised the option referred to above in any year, he shall not be entitled to withdraw that option in any subsequent year without the consent of the Commissioner of Income-tax.

(*xii*) The percentage allowance fixed in the rule for the "air conditioning machinery" covers the machinery portion of humidifying plants but plant other than machinery (*e.g.*, tube-wells, settling tanks, distributing pipes) is excluded. Such plants will remain

entitled to depreciation at the general rate prescribed in the rule for "machinery, plant and furniture".

(xiii) As stated in paragraph 53, no allowance can be made on account of the depreciation of the assets of a business other than the particular items mentioned in this sub-clause and in rule 8. No depreciation allowance, for example, is permissible to provide for the amortisation of capital sums paid on account of the purchase of the lease of a mine or for the depreciation of wasting assets such as coal. Depreciation allowances should however be allowed for sinking shafts, tramways and sidings in coal mines, which are included in the term "plant".

(xiv) Where a business of such a nature that the profits derived from it were not previously liable to tax owing to a special exemption conferred either by statute or by notification or rule having the force of law (examples are Shipping Companies and Indigo Companies) is taxed for the first time, the assessee is not entitled to claim in the first year of taxation under proviso [illegible] to section 10 (2) [illegible] accumulated depreciation allowances for all the years during which the profits of the business were not liable to tax. But in such cases depreciation must be allowed year by year for the full period of 2 [illegible] years or whatever it may be.

(xv) Shares and securities held as part of the capital of a business should be similarly dealt with. So long as shares or securities continue to be held by a company, firm or individual as part of his or its capital any depreciation or appreciation in their market value is outside the scope of the Income-tax Act; and similarly, when the value of shares and securities so held (for example, the securities constituting the reserve fund of a bank or other company) is realised the transaction is a capital transaction and no account should be taken for income-tax purposes of any profit or loss resulting from the sale. On the other hand where an individual company or firm habitually uses part of his or its resources in the purchase of securities or shares with a view to obtaining profit on their sale and the subsequent re-investment of the proceeds, the individual, company or firm is, in altering his or its investments, carrying on a trade for the sake of obtaining profit therefrom, and the profits secured or losses incurred are trade profits or losses which must be taken into account in determining the assessment to income-tax. It will, therefore, always be a question of fact to be decided on the merits of each case whether the changes in investment are of sufficiently systematic a character to constitute the exercise of a trade, but if they are, the profits therefrom are liable to assessment, and an allowance must be made for any losses in calculating the amount of tax payable.

60. *Business—Obsolescence allowances.* [*Section 10 (2) (vii).*]—(*i*) It must be particularly noted that the allowances under this clause can only be given where the machinery or plant *becomes obsolete.* Where machinery or plant is sold for reasons other than that it has become obsolete, no allowance can be given. Where a machine is sold no allowance can be given if the facts present evidence that the machine is not obsolete.

(*ii*) The amount allowed for obsolescence is, again, calculated upon the original cost *to the owner.* The amount to be given is the amount of such original cost to the owner as reduced by the depreciation allowances under clause (*vi*) and the amount for which the machine is actually sold or its scrap value. For example, a machine costing Rs. 10,000 on which a depreciation allowance of 10 per cent. of the original cost is admissible is sold after 5 years for Rs. 2,000. The original owner gets Rs. 5,000 for depreciation and nothing for obsolescence as the machine is not scrapped or sold on account of obsolescence. The second owner gets also an allowance at the rate of 10 per cent., and as the cost of the machine to him was Rs. 2,000, his annual allowance is Rs. 200. If owing to its becoming out of date the machine is scrapped useless after three years then in the year in which it is so scrapped the second owner can claim Rs. 1,400 for obsolescence. No allowance for obsolescence is obviously permissible if the machine lasts 10 years or more *with any one owner.* This will apply also where the "second owner" is not merely a purchaser but a "successor" to the business of his predecessor to which the machine originally belonged.

61. *Business—Allowance on account of dead or useless animals.* [*Section 10 (2) (vii-a).*]—The allowance in respect of live stock that has died or become permanently useless to the assessee should be granted whether the live stock is replaced or not.

62. *Allowance on account of rates or taxes.* [*Section 10 (2) (viii).*]—The allowance under this clause covers only the land revenue and local rates or municipal taxes paid in respect of the portion of the *premises* used for the purposes of the business. In assessing income from business a local rate or tax which is payable irrespective of whether profits are made or not should be treated as expenditure incurred *solely* for the purposes of earning profits or gains within the meaning of section 10 (2) (*ix*) if the rate or tax is not an admissible deduction under section 10 (2) (*viii*). No allowance can be given on account of any other rates or taxes whatsoever. All rates and taxes therefore, whether levied on the profits of a business or which are charged on the proprietor of a business in respect of anything other than the actual portion of the premises used for the purposes of the business, must be disallowed. (See also paragraph 69 and Patna High Court Case

No 102 of 1920, in the matter of Raja Joyti Prasad Singh Deo of Kashipur I, Srinivasan's Tax Cases page 103)

63 *Business—Allowance on account of bonus paid to employes* [*Section 10 (2) (viii a)*]—The allowance under this clause covers any sum paid as bonus or commission to an employé for service rendered if such sum would not have been payable to him as profits or dividends if it had not been paid as bonus or commission provided that the amount is reasonable with reference to his pay and conditions of service the profits of the business for the year in question and the general practice in similar businesses

64 *Miscellaneous business deductions* [*Section 10 (2) (ix)*] —(i) While the Act makes no provision for contributions by employers to private provident funds constituted for the benefit of their employes being deducted in arriving at business income liable to tax, contributions to such provident funds by employers should be allowed as a business expense in all cases where the funds are constituted as irrevocable trusts and where no part of the employers contributions can be recovered by them Where however such funds remain in the hands or under the control of the employers, no contributions by them can be allowed as a business expense but in such cases actual payments made to employees leaving the service of the employer should be allowed as a business expense in the year in which such payments are made so far as such payments are made from the contributions of the employers whether in that year or in preceding years As regards employers' contributions to ' recognised provident funds see paragraphs 24 and 31

(ii) The same remarks apply to superannuation funds or reserves for the purposes of providing pensions to ex employee Actual sums paid as pensions to ex employees or to the widow or children of an ex employee should however, be allowed as a business expense where the pensionary payment is a fixed or recurring one but no claims on account of pensions" should be entertained where the ' pensions are paid to persons who have or who at any time had a share or interest in the business

(iii) Premia paid by an employer to cover the risk of liability to compensate any of his employés for injuries under the Workmen's Compensation or Accident Insurance Act (VIII of 1923) should be treated as business expenses and allowed under section 10 (2) (ix) as a deduction in assessing income from business

(iv) The following principle should be observed in dealing with claims that *bonâ fide* expenditure for the welfare of the employés of a business should be allowed as a business expense No contributions towards expenditure incurred by *outside bodies which* may benefit the employés of a company or firm *incidentally with*

members of the general public, should be allowed, such as contributions for the support of clubs, recreation grounds, religious institutions, dispensaries, hospitals, schools and the like. If, on the other hand, an assessee maintains a school or a dispensary solely for the benefit of his employés *reasonable expenditure on the upkeep* of such an institution should be allowed as a working expense. Similarly, expenditure incurred in the maintenance of a conservancy staff employed to keep the surroundings of the dwellings of the employés of a concern in a sanitary condition should be allowed. In no case, however, should any capital expenditure be allowed, such as, for example, the amounts expended on the construction of latrines, drains, water-works or hospitals.

(*v*) Sums embezzled by an employee are an admissible charge against the business of his employer.

(*vi*) Assessees sometimes receive from their constituents payments intended to cover Railway expenses, cooly charges, etc., which they have to incur in the course of their business. When payments are made out of the sums and are debited specifically to constituents they may be allowed as deductions from the assessable income, without insisting on strict proof of payment by the production of vouchers, provided that it is reasonably certain that the payments have been made.

(*vii*) Indian traders and business men charge their customers or clients a small fee on each transaction—for example so many pies on each bag of some commodity sold—the proceeds of which are supposed to be devoted to various religious, charitable or educational purposes. Such *customary* subscriptions by clients and customers for religious or charitable (including educational), purposes, and the corresponding expenditure by the assessee, should be left out of account altogether in computing the taxable income, provided that the Income-tax Officer is reasonably satisfied that the sums in question are really applied by the assessee ultimately (and not necessarily in the year of collection) to the object for which they were ostensibly collected. No attempt should be made to separate these subscriptions from the trade expenses of the customers or clients to whom they are charged and to disallow them as not being trade expenses.

(*viii*) Sums received for political purposes should be included in income and the corresponding expenditure on these purposes should not be allowed as a deduction from the taxable income.

(*ix*) Strictly speaking, the cost of audits and similar operations conducted specially for income-tax purposes, whether in connection with assessments, with appeals or with revision petitions cannot be allowed as a deduction from taxable profits [Ruling of the Madras High Court in Secretary, Board of Revenue (Income-tax),

Madras, *versus* D Munisami Chetty & Sons I, Srinivasan's Tax Cases, page 227]

(*x*) The reason for this is, of course, that whereas an audit or similar operation conducted in the ordinary course of business is properly treated as a business expense it is clear that one conducted purely in connection with Income tax proceedings cannot be said to be incurred solely for the purpose of earning the profits or gains subject to income tax [see section 10 (2) (*ix*)] Since, however, there may be difficulty in individual cases in determining whether an audit of similar operation has been conducted wholly or partly for business purposes and in the latter case, what portion of the expenditure incurred in connection with it can properly be treated as a 'business expense', it has been decided that audit or other accountancy services in connection with an assessee's accounts for the previous year rendered before his return of income is made if such a return is made on the due date, or within any extended period allowed by the Income tax Officer for its submission should be treated as work done for ordinary business purposes and therefore the expenditure incurred thereon should be regarded as an admissible deduction in computing taxable income

(*xi*) The question as to what is capital or revenue expenditure in respect of tea gardens is one the answer to which depends on certain general principles The English decision in the case of Vallambrosa Rubber Co, *versus* Farmer (5, English, Tax Cases, 329) establishes certain principles which are applicable to their case The first is that the cost of the *upkeep* (*e g*, weeding and draining) of an area that is not in bearing may be charged to revenue While expenditure on the maintenance of an area that has not reached maturity may be classified as revenue expenditure, any income derived from the sale of tea at this stage is on the same footing as income from the sale of tea at any other stage and should be taken into account in computing the taxable income of the concern The second principle is that any expenditure that creates a potential source of recurring revenue at whatever stage in the development or working of the estate is capital expenditure The source of revenue in tea gardens is the tea bushes and whenever a bush is planted, a potential source of revenue is created It is the individual bush that must be considered and not an area planted with such bushes In concession, however, to representations that in filling or supplying is in many cases necessary in order, to keep a tea garden in a state of efficiency and that to regard expenditure on such operations as capital expenditure will mean hardship, a proviso has been added in Rule 24 to the effect that an allowance will be made on account of planting bushes in replacement of bushes that have died or become permanently useless in an area already planted, unless such area has previously

been abandoned. This concession is extended only to tea gardens in British India, since Rule 24 applies only to such gardens.

65. *Method of converting the net profits of sterling companies into rupee for the purposes of income-tax.*—Where the business of a sterling company is transacted entirely in India, there is no need for the Income-tax Officer to look at the sterling accounts as he can get a record and ask for a return of the transactions in rupees. He should act in the same way in cases where the profits of the Indian branch of a company operating in other countries can be separately ascertained. In the case of a company operating through local branches in different countries where the profits of the Indian branches cannot be ascertained separately but have to be deducted from the total sterling profits of the company from all its operations, the net profits of the company for the purposes of assessment to Indian income-tax should be converted into rupees at the rate of exchange ruling on the last day of the year to which the account relates unless the Income-tax Officer is able, by an examination of the accounts, to ascertain the average rate of remittances throughout the year and to deduce from that the rupee profits of the Indian branches.

66. *Premia on issue of shares.*—The premia received by a company on issue of shares are capital receipts, and, as such, not chargeable to tax. In the same way, the cost of issuing shares is capital expenditure and cannot be allowed as a deduction for income-tax purposes.

67. *Professional earnings—Deductions.* [*Section 11 (2).*]—(*i*) Any expenditure that is claimed as a deduction under this sub-section must have been incurred solely for the purposes of the profession or vocation. No deduction can be allowed in respect of personal expenses of the assessee or expenses of the assessee or expenses of a capital nature; but an allowance should be made in respect of depreciation of buildings and depreciation and obsolescence in respect of machinery, apparatus, appliances, plant, furniture or other Capital assets used in profession. The term "Capital assets" is intended to include books purchased by an assessee for the purpose of his profession. Two conditions must be satisfied before a claim for depreciation or obsolescence can be admitted: firstly, that the machinery, plant, etc., in respect of which a claim is made should be used solely for the purposes of the profession or vocation the earnings from which are computed and secondly, that they should be the property of the assessee. No allowance can be claimed if they are leased from others.

(*ii*) The conditions specified in section 10 (*2*) (*vi*) and (*vii*) regarding the calculation of depreciation, etc., apply to cases under this sub-section also, *viz.*, (1) the particulars prescribed should be

furnished to the Income tax Officer, (2) where full allowance can not be made in any year owing to there being no earnings at all or the earnings being insufficient to grant the full allowance, the allowance or part of the allowance to which effect has not been given should be carried forward to succeeding years, and (3) the aggregate of all the allowances made should not exceed the original cost to the assessee Any obsolescence allowance granted under this sub section should be limited to the difference between the original cost to the assessee of the machinery etc as reduced by the depreciation allowance already granted and the scrap value or sale price as the case may be

68 *Income from other sources —Deductions* (*Section 12*) —The interest paid on money borrowed for the purchase of shares or securities can only be set against the income obtained from the shares or securities where it is proved either by a banker s certificate or otherwise that the borrowing has been definitely and solely for that purpose, but where such proof is afforded, an allowance should be given

69. *Deductions on account of taxes paid* —(i) No deduction is permissible in computing the income, profits or gains on account of any taxes or rates paid in respect of such income, profits or gains except that a local rate or tax which is payable irrespective of whether profits are made or not (see paragraph 63) is to be allowed as deduction from income from business Section 10 (2) (*viii*) of the Act allows as a deduction from business profits sums paid on account of land revenue, local rates or municipal taxes in respect of premises used for the purposes of a business This specific provision has been inserted because the local rates paid on account of such premises are usually in the nature of a payment for services rendered (*e g* , by supply of water conservancy arrangements, etc) but that allowance is closely restricted to a local tax or rate levied *in respect of the premises* used for the purpose of the business No deduction is allowed for any other local rate or tax such as for example local taxes varying according to the income or profits of a business Nor is any deduction on account of a local rate or tax on property allowed from the annual value of property which is taxable under section 9 Similarly no allowance is permissible on account of income tax or super tax paid by an assessee Where property, profits or gains are liable to taxation in other countries or by other authorities in British India all these authorities are taxing the same property or profits for different purposes In the Patna High Court Case No 102 of 1920 in the matter of Raja Jyoti Prasad Singh Deo of Kashipur (I, Srinivasan's Tax Cases page 103) it was held that the amounts paid for cases by a person deriving an income from rent of collieries and from royalties on the amount of coal raised from the collieries are not

to be deducted in computing the amount of his assessable income, and it was clearly stated that "the payment of a tax which is conditional on the making of an income and which has to be calculated on the amount of such income after it has come into existence cannot be said to be expenditure for the making of such income".

(ii) Again in the Madras High Court, Case No. 11 of 1920, Chief Commissioner of Income-tax, Madras, *versus* The Eastern Extension Australasia and China Telegraph Co., Ltd., (I, Srinivasan's Tax Cases, page 120), it was held that in computing the profits of a non-resident company under the provisions of rule 33, the taxes payable in other countries in respect of the profits of the company are not to be deducted.

70. *Taxation of a Hindu undivided family. (Sections 14 and 25-A.).*—(i) A Hindu undivided family is treated as a separate entity for income-tax purposes. It is taxed like an individual at a graded scale according to its total income and no account is taken of how that income is distributed amongst the individual members when such individual members are assessed to income-tax or super-tax in respect of their separate income. This applies even in cases where the amount of the income of the Hindu undivided family is less than Rs. 2,000 and is, therefore, not liable to taxation in the hands of the manager of the family. The same remarks apply to super-tax.

(ii) Section 25-A will only apply if a member of a Hindu undivided family *claims* that it has become divided. If, however, the family prefers to go on being assessed as undivided though really divided, the Income-tax Officer has no authority to act under this Section. *If the Income-tax Officer has not passed an order under section 25-A (1) in respect of a Hindu family hitherto assessed as undivided, such family shall be deemed to continue to be a Hindu undivided family.*

(iii) The taxation of the income of a Hindu undivided family thus differs from the taxation of the income of an unregistered firm since where the profits of an unregistered firm are not liable to taxation in the hands of the firm. such profits are taxed in the hands of the individual partners both for the purposes of income-tax [section 14 (2) (b) and section 16 (1)] and super-tax (section 55 proviso), and where the profits are taxed in the hands of the unregistered firm, the share of such profits of each partner is included in his "total income" for the purpose of determining the rate at which he shall pay income-tax on his other income [section 16 (1)].

(iv) Where the income, profits and gains of a member of an undivided Hindu family consist of his personal earnings and acquisitions by his own exertions, they must be treated as his

self acquired property and not as joint family property, unless they flow from the employment in business or otherwise of the joint funds

(v) Khojas (and Cutchi Memons), not being Hindus, joint families composed of such persons are not Hindu undivided families for the purposes of the Act

(vi) Jain and Sikh undivided families should be treated as Hindu undivided families, unless in any particular case, the assessees claim that they should not be treated as such Where such a claim is put forward, it is for the assessee to prove the existence of some special custom or practice applicable to the family in question which would justify its not being treated as a Hindu undivided family

(vii) For the method of serving notices or requisitions on a Hindu undivided family see paragraph 137

71. *Taxation of a firm* —(i) For the difference between a registered and unregistered firm, see paragraph 10

(ii) While income tax is leviable on the profits of a registered firm at the maximum rate (see Finance Act) and while under section 48 (2) a member of a registered firm is entitled to get a refund both in cases where the income of the member is below the minimum chargeable with income tax, and in cases where the maximum rate is greater than the rate applicable to his total income, it is desirable that, so far as possible such refunds should be avoided

(iii) The question of refund does not arise if the personal income of none of the partners liable to Indian Income tax including his share in the Firm (whether he be resident or non resident) is less than Rs one lakh In other cases, if each of the non resident partners is a British subject or a subject of an Indian State and produces with his individual return of income adequate evidence of the amount of his foreign income that is to be taken into account in determining his claim to a refund, and all the resident partners (if any) file returns of their individual incomes, the Income tax Officer, on being satisfied that the whole of the profits of the registered firm are accounted for in these personal statements, should charge the partners direct at the rate appropriate to their total income

(iv) In view of sub section 5 of section 48, this procedure cannot be applied to the following cases —

(1) Firms in which one partner at least is a non resident foreign subject (other than a subject of an Indian State) to whom no refund can be due in any case

(2) Firms in which one partner at least is a non-resident British subject or subject of an Indian State to whom a refund may or may not be due—that is, who has not yet produced adequate evidence as to the amount of his foreign income.

(3) Firms in which in addition to non-resident partners there is any resident partner who has not filed a return of his total income.

(v) The demand notice in respect of the profits of such firms must be addressed to the firm, and no individual assessments should be made on, or demand notices issued to the partners in respect of their shares of the profits of the firm. The position will be just as though the firm were an *unregistered firm*. If a partner has other income he will be assessed on that, separately, and of course his total income will include his share of the profits of the firm. The share due by each partner of the income-tax on the profits of the firm should be intimated to him informally, with an indication that this is done merely as a matter of convenience and does not affect the liability of the firm as such for the income-tax on the whole of its profits. Separate assessments on partners will also have to be made for super-tax, if necessary.

(vi) For the method of setting-off a loss of profits of a registered firm against other income of a partner see paragraph 94.

(vii) In computing the total income of a member of a registered firm or unregistered firm for the purposes of income-tax or super-tax there should be included in that total income "such an amount of the profits or gains of the firm as is proportionate to his share in the firm". This particular phraseology has been adopted in section 14 (2) (b) and in the proviso to section 55 in order to make it clear that it is the proportionate share of a partner in the whole of the assessable profits of a firm that is to be taken into account in determining his total income, and not merely the amount that he removes from the possession of the firm. Some partnership deeds, for example, provide that the partners cannot remove more than a certain proportion of the profits in any year or, again, that a certain proportion of the profits must be distributed in charity. It is now made clear in the Act that it is the whole of his proportionate share in the total assessable profits of the firm that is to be taken into account and that that proportionate share cannot be reduced by any consideration of how those profits are utilised.

(viii) For the method of dealing with a change in the constitution of a firm see paragraph 96.

(ix) For liability in cases of discontinuance of a business owned by a firm see paragraph 97.

(x) For the method of serving notices or requisitions on a firm see paragraph 137

72 *Taxation of associations of individuals—Section 14 (2) (c) and Section 23 A* —An association of individuals other than a firm Company or a Hindu undivided family, is liable to income tax and super tax as if it were an individual Tax is not payable by an assessee in respect of any sum which he receives as his share of the profits or gains of an association the profits or gains of which have been assessed to income tax, but such sum will be included in his "total income" to determine his liability to income tax and the rate applicable to him

73 *Exemptions on account of life insurance* (*Section 15*)—(i) Under the provisions of section 7 (*1*) proviso and section 15 an abatement of income tax is given, after the assessment of the tax has taken place, on such portion of an assessee's income as may have been—

(i) deducted from his salary under the authority and with the permission of the Government for the purpose of securing a deferred annuity to him or making provision for his wife or children [section 7 (*1*) proviso],

(ii) paid by him to an Insurance Company in respect of an insurance or deferred annuity on his own life or on the life of his wife, or

(iii) paid by him as a contribution to any of the provident funds mentioned in paragraph 23

Provided that the total amount on which an abatement will be permitted under this provision may not exceed one sixth of the total income of the assessee

(ii) Contributions to the Widows, Orphans and Old Age Contributory Pension Fund, 1925, are exempt from income tax since they are deducted under the authority of Government from the salaries of the soldiers concerned for the purpose of securing to them a deferred annuity and of making provision for their wives and children

(iii) Compulsory allotments from a soldier's pay made to his wife in England under Article 886 of Royal Warrant for Pay, are exempt from income tax since they are deducted under the authority of Government, for purposes of making provision whether present or future for the wife

(iv) Deductions at source on account of contributions made by an officer to provide passage money for his widow and orphans under the Indian Military Service Family Pension Regulations and the Indian Military Widows and Orphans Funds Regulations are exempt from income tax as the contributions are in the nature of life insurance premia Under the rules, a certificate of health

is required before an officer can contribute and the contribution which he has to pay is regulated according to the age of the officer concerned.

(*v*) Out of the premia paid in respect of a policy that covers the risks of sickness and accidental injury and also the risk of death, only so much as is attributable to the risk of death (from whatsoever cause) is admissible as deduction from the income liable to tax. The portion of the premia so attributable should be settled in consultation with the Insurance Company concerned, whose formula should be accepted unless there appears to be some strong ground for modifying it.

(*vi*) No rebate of income-tax is allowed on any sum withdrawn by an assessee from his Provident Fund in order to pay his life insurance premium.

(*vii*) Rebate of income-tax in respect of a premium paid on account of life insurance is admissible to a partner of a registered firm individually whose income is taxed at source, in addition to the refund of tax to which he may be entitled under section 48.

(*viii*) It is to be particularly noted that the insurances in respect of which this concession is granted are insurances *on the life of the assessee himself or his wife,* and not any other form of insurance whatsoever. The solitary exception is in the case of a Hindu undivided family in the case of which insurance are permissible *on the life* of any male member of the family or of the wife of any such member and not merely on the life of the head or manager of the family. But though insurances *on the life of a child* do not entitle the assessee to the concession, it should be noted that certain kinds of insurance which are *for the benefit of the child* should be treated for the purposes of section 15 as insurances on the life of the assessee. Policies are often taken by assessees with a view to securing a provision of a lump sum for their children for their marriage, education or other purposes at a stipulated time and the sum assured becomes payable on that date even if the subscriber dies after paying one premium only. An insurance of this kind is really an insurance on the life of the assessee as it is designed to secure in the event of the assessee's early death (though not immediately after his death) a benefit considerably greater in amount than the annual payments which he has made and consequently contributions to such policies are eligible for rebate under section 15 (1). The criterion that should be adopted in such cases is whether or not there is a contract dependent on the life of the assessee.

(*ix*) For the purpose of an abatement claimed by an assessee under this section insurance premia payable in sterling should be converted at the rate of exchange in force on the day on which the premium payment was made in cases where the assessee is unable to state the actual cost of remittance.

(ii) The marginal relief allowed under section 17 and the exemptions referred to in section 7 (1), proviso to section 8, and section 15 (1) should not be regarded as alternatives The correct method of working the two sections concurrently is as illustrated in the following example —

(iii) If a man's total income is Rs 5,010 and he pays Rs 100 as Insurance premia, the tax he should pay is that on Rs 4,999 *minus* Rs 100 (=Rs 4,899) at six pies *plus* surcharge at ½ pie *plus* Rs 11 The tax payable will be the same as if his total income is Rs 5,010 of which Rs 100 is derived from tax free securities or from an unregistered firm that has been assessed to income tax but if the Rs 100 were derived from a registered firm, or from dividends the total tax to be suffered would be Rs 180 4 against which credit would have to be given for the tax indirectly suffered on the share of the firm's income or the dividend, Rs 14 11 so that the net sum payable would be Rs 165-9

(iv) The following points should be borne in mind in applying section 17 where a portion of the assessee's income is derived from an unregistered firm that has paid income tax —

(i) Income tax is not "payable" by a partner in a firm on his share of the firm's income

(ii) Relief is to be given to an assessee in respect of the "income-tax payable by him"

(iii) Section 17 is to be applied (*a*) "where necessary", (*b*) in order to "reduce" the tax and (*c*) so that the result of an assessee's total income exceeding a sum after which the rate of tax rises, shall not be that the extra tax due to the rise in the rate is greater than the excess of the total income over the maximum sum liable to the lower rate The section is not to be applied where it is not necessary to do so, that is, where the result of applying it would not be to reduce the tax

(v) For the purpose of calculating the tax payable by an assessee under section 17, surcharge imposed by the Indian Finance Act, 1935, should be calculated on the rate of tax applicable to the next lower stage of income and then to the amount of tax so arrived at should be added the amount by which his total income exceeds the next lower stage without adding any surcharge on the latter amount For example, the tax payable on an income of Rs 5,000 will be the tax payable on Rs 4,999 at the rate of 6 pies per rupee, *viz* , Rs 156 4 *plus* surcharge of 8⅓ per cent on this amount, *viz* , Rs 13-0 *plus* the difference between Rs 5,000 and 4,999, *viz* , Re 1. Surcharge will *not* be calculated on the whole amount of tax, *viz*., Rs 157-4 but only on Rs 156 4

(*vi*) For marginal relief in respect of super-tax, see paragraph 19.

76. *Deduction of the tax at source.*—(*i*) Section 18 of the Act provides for the *deduction of tax at the source* as distinguished from *taxation at the source* referred to in paragraph 11. It provides for the income-tax being deducted by the persons responsible for making payments of "salaries" or "interest on securities" before such payments reach the hands of the recipients. The section also requires all persons responsible for paying any interest not being interest on securities, to a non-resident to deduct at the time of payment income-tax and super-tax therefrom if the amount of such interest exceeds the maximum amount which is not chargeable with super-tax. Similarly where a dividend payable to a non-resident shareholder exceeds the maximum which is not chargeable with super-tax the company paying the dividend should deduct super-tax at the time of payment. In respect of the two last mentioned sources of income the Income-tax Officer is also empowered to direct the person responsible for paying them to deduct tax if he has reason to believe that the total income of such non-residents will exceed the maximum which is not chargeable with super-tax. The tax so deducted is paid over by the persons making the deduction to the credit of the Government of India within the period specified in rule 10 along with a statement giving the details shown in rules 11 and 12. Such deductions of income-tax are under sub-section (*5*) of section 18, treated as payments of income-tax on behalf of the persons from whose income or interest the deduction was made and credit is given to them in the assessment of their income if an assessment is made of their other income. The form of return of income that has to be made under section 22 (*2*) prescribed in rule 19, therefore, provides for the tax previously charged upon the income being set off against any additional charge, while section 48 (*3*) provides as an alternative for a refund in cases where the rate deducted is greater than that applicable to the total income of the assessee.

(*ii*) Section 18 (*2*) (*a*) of the Act provides that all payments on account of salary made out of India by and on behalf of Government shall be included in the amount on which tax is deducted at source in India. All leave salary paid in the United Kingdom or a Colony to Government servants on leave in the United Kingdom or the Colony has been exempted from tax, *vide* paragraphs 17 and 38. Any sterling overseas pay or other sum that may be paid in the United Kingdom or a Colony to an officer on leave in the United Kingdom or the Colony on account of his salary while on leave is, therefore, exempt from income-tax. The fact that a part of the leave salary is drawn in India does not affect the exemption of the balance drawn in the United Kingdom or a Colony. The part of the leave salary that is paid in sterling in

the United Kingdom or a Colony to an officer on leave in the United Kingdom or a Colony should not, therefore, be included in the income from which tax is deducted at source by the officer paying him the rupee portion of the leave salary in India The same principle applies to other payments falling under "salaries" within the meaning of section 7 of the Act made partly in India and partly out of India and exempt under any notification issued under section 60 of the Act The salary paid in the United Kingdom or a Colony to an officer on duty in the United Kingdom or a Colony is exempt irrespective of whether it include sterling overseas pay or not So also vacation salaries paid in the United Kingdom or a Colony when on vacation therein

(iii) Any person required to make a deduction under section 18 who fails to do so may himself under sub section (7) be deemed to be an assessee in default in respect of the tax while he is also liable to be prosecuted for an offence punishable under section 51 (a) A penalty can also be imposed under section 46 (1) for such default if the Income tax Officer is satisfied that such persons has wilfully failed to deduct and pay the tax The words "person responsible for paying" used in section 18 (2) should be interpreted as referring to the person entrusted by the employer with the duty of paying salaries and not to the employer himself if he does not himself pay them and this applies also to the case of an employee entrusted by an employer with the payment of his (the employee's) own salary

(iv) Persons making deductions at the source are indemnified for the deduction under section 65

(v) The provisions of this section obviously cannot apply to cases where the payments are made outside British India as for example, the payment of "interest on securities" in Indian States or in foreign countries or the payment of "salaries" by foreign employers to residents in British India It is for this reason that section 19 of the Act specifies that in any case where income-tax has not been deducted in accordance with the provisions of section 18, the tax is payable by the assessee direct This provision covers not only cases where the employer or the person paying "interest on securities" does not reside in British India, but also cases where owing to an assessee's salary being less than Rs 2,000 income tax has not been deducted

77 *Deduction at source of tax on "salaries"* —(i) The Act of 1918 provided that where a payment was a non-recurring payment the tax should be deducted at the rate appropriate to that particular sum as if it were the whole of the assessee's income, and that where a payment was a recurring payment, the tax should be deducted on the assumption that the total income of the assessee amounted to twelve times the recurring sum As these provisions

gave rise to a considerable amount of unnecessary trouble to assessees and their employers as well as to income-tax authorities section 18 (2) of the Act now provides that deductions from salary shall be made at a rate which should approximate as closely as possible to the rate appropriate to the total assessable income of the assessee under the head "salaries", and it further empowers the person deducting income-tax from "salaries" to rectify, in subsequent deductions, mistakes made in previous deductions. Thus, if an employé's regular monthly salary is Rs. 500, the tax would be deducted by the employer at the rate appropriate to Rs. 6,000 but if such an employé received a *commission or bonus* or arrears of pay or officiating allowance amounting to Rs. 5,000, the employer is empowered not only to make deductions in future at the rate appropriate to an income of Rs. 11,000, but also to make up the deficiency in previous collections owing to the lower rate having been applied.

(*ii*) Salaries are sometimes paid or adjusted annually. Meanwhile, the employee may draw (and even overdraw) against the salary due or that will become due to him. If employers claim to deduct as business expenses the sums thus drawn by their employees, *this can only be done on the ground that the sums represent salary* and therefore, tax should be deducted at source from all such sums. When it is found that tax has not been deducted, the employee should be assessed direct on all such sums if they have been allowed to the employer as business expenses. If they are not so allowed, they need not be taxed in the employees' hands whether by deduction or by direct assessment till the drawings are adjusted against salary actually earned and are claimed as business expenditure by the employer.

(*iii*) The obligation to deduct income-tax under this head now applies to *all employers*.

(*iv*) For the power of an employer to allow abatements on account of insurance premia see paragraph 73. As regards private employers, it may be noted that it is open to them to make these allowances on account of insurance premia or not according as it may suit the convenience of themselves and their employés as, if such rebate is not given when the tax is deducted at the source, it may be claimed by the employé in the following year, if he is assessed under section 23, either as a refund or as a set-off against *any amount due by him.*

(*v*) As regards the meaning of the word "salaries" see paragraph 36.

(*vi*) For the deduction from "salaries" of arrears of tax due see paragraph 115.

78. *Deduction at source of tax on "interest on securities"* (*See paragraph 39*).—(*i*) The only securities of the Central Government (other than income-tax free securities) from the interest

on which income-tax is not deducted in advance are Treasury Bills

(ii) As the person paying interest on securities has no information regarding the total income of the person to whom the payment is made, section 18 (3) provides that deductions of income-tax from 'interest on securities'' shall be made at the maximum rate fixed by the Finance Act Where the total income of the person receiving the interest on securities is less than the income to which the maximum rate applies, he is entitled, under the provisions of section 48 (3), to claim a refund In order to simplify the procedure in connection with refunds, section 18 (9) makes it obligatory upon the person deducting income tax from the interest on securities to issue to all security holders a certificate in the form prescribed in rule 13 or 13 A specifying the amount of tax deducted from the interest and the rate at which it has been deducted The form of certificate attached to rule 13 is suitable for Government securities only, while that attached to rule 13-A provides for securities issued by local authorities and companies and covers the case of securities payable to bearer It frequently happens, however, that security holders hand over their securities and bonds to their bankers for collection In that event the certificate given by the person deducting the income-tax from the security would be given to a bank for a whole block of securities In such a case the Income tax Officer should accept a certificate from the bank in the following form, and act upon it as if it were a certificate received direct from the persons deducting income tax from the security —

'We hereby certify that interest on the various securities specified on the back hereof was collected by us on behalf of and that we received payment or were credited with the proceeds thereof (less income tax) as stated on the other side amounting to Rs

The securities specified are covered by certificates issued to the Bank under section 18 (9) of the Indian Income tax Act, 1922

Signature of Banker

Address

Date

To be signed by the claimant

I hereby declare that the securities on which interest as above specified has been received are my own property and were in the possession of at the time when income tax was deducted

Signature

Date

(N B —The securities to be produced when required in support of any claim)"

REVERSE OF FORM.

Schedule of securities.

No. and description of securities.	Date of payment of interest after deduction of income-tax.	Period for which interest has been paid.	Amount of interest (less income-tax).	Remarks.

(*iii*) A person who has other income liable to tax may, instead of claiming a refund, get the amount set-off against the amount due from him in the assessment made on him under section 23 by filling up the form prescribed in rule 19.

(*iv*) The certificate under section 18 (9) must be taken by the Income-tax Officer of the area in which the claimant or assessee is assessed or resides (see rule 39) as conclusive evidence of the payment of the tax, both where a refund is claimed in cash and where a set-off against the tax assessed on other income is claimed.

(*v*) While these arrangements will facilitate the making of refunds, it is desirable that refunds should be avoided as far as possible. There are, for example, certain institutions, authorities and funds, the income of which is exempt from tax under the provisions of section 4 (3). Similarly there are persons whose assessable income is less than Rs. 2,000 and who are not, therefore, liable to tax. There are other cases where the Income-tax Officer may be satisfied that the income of a holder of security while liable to tax is not likely to fluctuate so widely as to alter the rate appropriate to the total income. The Income-tax Officer must, in all proper cases, on application made by the assessee issue a certificate authorising the person paying the interest on securities to make no deduction of tax or to deduct tax at a lower rate than the maximum. The certificates will be granted to residents outside British India by the Income-tax Officer. Non-residents

Refund Circle, Bombay, and to others by the Income tax Officers concerned Such a certificate might be in the following form —

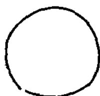
Income tax Office

Dated 193

To

I hereby authorise (1)

to deduct income tax at the rate of (2) pies in the rupee when paying the interest on the following securities to their present holder (3) The authorisation will remain in force until cancelled by me



Description of securities

(1) Name and address of person paying the interest (2) Rate of Income tax sanctioned (3) Name of person receiving interest

Income tax Office

(vi) Such certificates when issued should remain in force until they are cancelled and should not be required to be renewed annually

(vii) The person, who should apply for exemption certificates in respect of interest on securities belonging to estates vested in the Administrator General or the Official Trustee will be the same as the person who is entitled to claim a refund in respect of such securities as explained in paragraph 116 below

(viii) When the owner of a security to whom a certificate is granted according to these instructions has endorsed the security to his bank for collection of interest, the officer responsible for paying the interest regards the bank as the real holder of the security and takes no cognisance of any arrangement that may have been entered into between the real owner of the security and the bank with the result that the certificate standing in the name of the real owner of the security granted by the Income tax Officer becomes inoperative Again sometimes the collecting banks purchase securities on behalf of their constituents and hold these in their own names and do not endorse them in favour of their constituents who are the actual owners In such cases the

owners obtain exemption certificates from the Income-tax authorities on production of the bank's Safe Custody Receipts issued in their favour and other proofs if necessary. To avoid the possibility of paying officers refusing to act on the exemption certificate in all such cases, Treasury Officers have been instructed to act on such certificates, when presented in respect of securities referred to above, if together with the exemption certificate a declaration by the bank is presented to the effect that the security continues to be the property of the person named as the owner in the exemption certificate.

(*ix*) Applications for refund of income-tax from residents of an Indian State who own securities whether of the Central Government, a local authority or a Company or hold shares in a Company in British India should, as in the case of residents outside India, be made to the Income-tax Officer, Non-Residents Refund Circle, Bombay. The Income-tax Officer will, however, allow a claimant who resides in an Indian State, the option of receiving payment of the refund through the Political Officer in that State, that is to say, the refund voucher that will be issued by the Income-tax Officer will be made payable, if the person applying for the refund so desires, at the Political Treasury of the Government of India in the particular Indian State, or if there is no treasury under the control of the Political Officer, at the prescribed British Indian Treasury.

79. *Securities held by Indian States or by Ruling Princes and Chiefs.*—(*i*) An Indian State is not assessable to any income-tax or super-tax except under the Government Trading Taxation Act, 1926 (III of 1926), that is to say, unless the State carries on a trade or business. Interest on securities held by Indian States is, therefore, not taxable. Interest on *Government* securities alone held by Ruling Princes or Chiefs as individuals, that is, not as the property of the State, is taxable under the law, but it has been exempted under section 60 of the Act (item No. 8 of paragraph 17). It is, therefore, no longer necessary that the authorities responsible for the payment of interest on Government securities should be supplied with information enabling them to discriminate between those that are the property of the State and those that are the property of the Ruler; but it is still necessary that such authorities before paying the interest without deducting income-tax should have evidence that the income-tax authorities are satisfied that the particular security in question is eligible to exemption on one or other of the grounds already mentioned. No such evidence is required where Government securities are held in the names of the Rulers of Indian States in the special non-transferable form prescribed by Rule 38 of the Indian Securities Rules, 1920; but in other cases, a State or its Ruler claiming the payment of interest free of income-tax should forward a certificate that it is, or he is, the owner of the securities in question through

the Political Agent, or Resident of the State (a) if the security is in the form of a stock certificate, to the Income tax Officer within whose jurisdiction is situated the Public Debt Office which issued the stock certificate, (b) if the security is in the form of a pro missory note or a bearer bond,—

> (a) When the interest is payable at a Public Debt Office or a treasury in British India, to the Income tax Officer within whose jurisdiction such Public Debt Office or treasury lies, and
>
> (b) when the interest is payable at a treasury outside British India, to the Income tax Officer Non resi dents Refund Circle, Bombay

(ii) The Income tax Officers mentioned will in turn grant exemption certificates in the form prescribed in paragraph 78 The exemption certificates will be issued in duplicate in regard to securities in the form of stock certificates or Promissory notes, one copy being sent to the State or the Ruler concerned and the other for purposes of registration direct in the case of stock certi ficates to the Public Debt Office of domicile where the stock certi ficates are registered and in the case of Promissory notes to the Public Debt Office or the Treasury Officer responsible for paying interest thereon

(iii) As regards Bearer Bonds, the certificates will be issued in triplicate, the original being sent to the State or the Ruler con cerned, the duplicate copy to the treasury responsible for payment of coupon relating thereto and the triplicate copy to the Public Debt Office within whose sphere such treasury is situated

(iv) The exemption certificate pertaining to securities in the form of promissory notes or bearer bonds given to the State or the Ruler concerned should be produced before the Public Debt Office or the treasury each time the promissory note or the coupon attached to the bearer bond is presented for payment of interest

(v) In the case of stock certificates or promissory notes, an ex emption certificate will remain valid until either—

> (a) it is cancelled by the Income tax Officer, or
>
> (b) the security is transferred to some other person than the State or the Ruler in whose name it stood at the time when the certificate was issued, or
>
> (c) the security is changed [illegible] e g., from a stock [illegible] bearer bonds or [illegible]

(*vi*) In the case of bearer bonds, a fresh certificate will be required to cover each interest payment.

(*vii*) The above orders refer to *Government* securities only, the interest on which is exempt in the case of Indian States as well as Indian Princes or Chiefs as stated above. As regards other securities *viz.*, those of local authorities and companies referred to in section 8 of the Act, only Indian States are exempt. In order to have exemption certificates for such securities, the State concerned will similarly send a certificate stating that it is the owner of the securities for which exemption is claimed through its Political Agent or Resident to the Income-tax Officer within whose jurisdiction the Public Debt Office or the office of the local authority or company is situate and on receipt thereof that officer will grant an exemption certificate in accordance with the above directions sending a duplicate thereof at the same time to the authority empowered to pay interest on the securities concerned. Nothing in these instructions relates to dividends of companies.

(*viii*) The procedure laid down in the preceding paragraph may also be adopted in the case of interest not being "Interest on securities" which is liable to be taxed at source under section 18 (3B) when it is to be paid to an Indian State in respect of money belonging to it and when such income is not liable under the Government Trading Taxation Act, 1926 (III of 1926).

(*ix*) Refund of any tax already deducted at source which should not have been deducted under these instructions, will also be allowed by the Income-tax Officer empowered to issue exemption certificates under these orders, provided that the claim therefor is presented within the period prescribed by section 50 of the Act, through the Political Agent or the Resident of the State concerned.

(*x*) The position in regard to dividends received by a State from a Company in British India in which it holds shares is entirely different from the position in regard to interest on securities held by a State. Tax on interest on securities deducted under section 18 (3) is paid by the person who deducts it on behalf of the owner of the security; where the owner is a State, it is tax with which the State was not properly chargeable as a State is not assessable to any income-tax or super-tax except under the Government Trading Taxation Act III of 1926. A refund is therefore admissible under section 48-A of the Act subject to the time limit prescribed by Section 50. On the other hand, the profits of a company are taxed as such and the tax is not paid by the Company on behalf of the shareholders. Any claim by a State to

a refund in respect of dividends can only arise not because the income was income in respect of which the State was not *ab initio chargeable with tax but in virtue of section 48 of the Act*

80 *Deduction of tax from interest other than interest on securities* —Before the passing of the Indian Income tax (Second Amendment) Act 1933 there was no provision in the Act for deduction of tax at source from any interest other than interest on securities Section 18 of the Act as amended now provides for such deduction which is however restricted to payments made to non residents alone Where the Income tax Officer has reason to believe that the total income of a non resident to whom such interest is paid will in any year exceed the maximum which is not chargeable with super tax, he may direct the person paying such interest to deduct income tax and super tax at the rate determined by him to be applicable to such non resident s total income Even if no such direction is made by the Income tax Officer the person paying interest to any person not known to be a resident is still under an obligation to deduct income tax and super tax if the amount of interest paid exceeds in the aggregate the maximum which is not chargeable with super tax In that case he must deduct income tax on the entire amount at the rate applicable to it and super tax on the amount by which such total exceeds maximum amount not chargeable with super tax at the rate applicable to such excess Failure to deduct such tax renders him liable to be treated as an assessee in default and to be prosecuted under section 51 (*a*) A penalty may also be imposed on him under section 46 (1) if the failure is wilful

81 *Deductions at source of tax on dividends declared by Joint Stock Companies* —It often happens that the holders of shares in Joint Stock Companies like the holders of securities authorise their bankers to collect dividends on their behalf When they do so it is the practice of the persons distributing the dividends to issue certificates under section 20 in the name of a bank for the whole block of shares held by the bank on behalf of its constituents so that it is not possible for an individual assessee for whom dividends are collected by his bankers to produce the certificate required by rule 14 The Income tax Officer should ordinarily accept a certificate from a responsible officer of a bank in the following form and act upon it as if it were a certificate received direct from the person responsible for distributing dividends —

We hereby certify that dividends on the various shares specified below were collected by us on behalf of and that we received payment or were credited with the proceeds thereof amounting to Rs

The dividends specified are covered by Certificates issued to the Bank under section 20 of the Income-tax Act, 1922.

IMPERIAL BANK OF INDIA, DEPOSITORS' DEPARTMENT,

Calcutta, *193* .

Superintendent.

Description of shares.	Holding.	Period.	Date of declaration of the dividends.	Date of receipt of dividends.	Amount of dividends.

To be signed by claimant.

I hereby declare that the shares on which dividends as above specified have been received are my own property, and were in the possession of the Imperial Bank of India, Calcutta, at the time when these dividends were realized.

Signature.

Date

N.B.—The safe custody receipts and the Bank's pass book to be produced in support of any claim.

82 *Certificate by a company to shareholders receiving dividends* (*Section 20*)—(i) The profits of a Company are charged to income tax at the maximum rate irrespective of what the amount of the profits may be (see Finance Act), and the shareholder of a company, is under section 48 (1) of the Act, entitled to claim a refund on proof to the Income tax Officer that the maximum rate of income tax is greater than the rate applicable to his 'total income' In order to get such a refund, he must produce the certificate required by section 20 and prescribed in rule 14

(ii) Certificate should however be accepted if they supply all the prescribed particulars, even though they may not be identical in phraseology or arrangement with the statutory form of certificate given in Rule 14 The shareholders claiming refunds in respect of dividends paid out of profits of which a part is not liable to Indian income tax, will only be able to enter approximate figures in the refund application, and in the return accompanying it, in respect of the amount of tax paid by the company on the dividends, and the amount of refund due but this should not prejudice the claimants in any way The Income tax Officer will accept the certificate but will apply the correct percentage Any certificate will be accepted that is otherwise in order if it shows *either* that the entire profits of the company are liable to Indian income tax *or* that *only part* is liable—irrespective of what the part may be Duplicates of certificates should be accepted if the claimant satisfies the Income tax Officer who has to sanction the refund that the dividends in respect of the tax on which the refund is claimed had actually been paid to the claimant and if the Income tax Officer has no reason to believe that a refund has already been granted in respect of the same dividends Duplicates should not be accepted unless a convincing reason is given for not producing originals Duplicates may be accepted for example if it is alleged that the originals have been lost and the Income tax Officer has no reason to doubt the statement, on the other hand duplicates should not be accepted if the originals can be produced though after some delay As in the case of the certificate regarding tax deducted from interest on securities mentioned in paragraph 78, where a shareholder in a company is assessed to income tax on account of income in his own hands, he may, instead of claiming a refund ask that any rebate to which he is entitled should be set off against the tax which he is personally liable to pay, and the form of return of income for individuals prescribed in rule 19 permits of this set off

(iii) The form of the certificate prescribed in rule 14 differs from the form of the certificate prescribed in rule 13 for income-tax deducted from interest on securities in that it simply contains a statement that income tax has been or will be duly paid by the

company and that the dividend was declared on a certain date. It contains no statement as to the rate at which tax has been or will be levied or as to the amount of tax paid or to be paid. The reason for this is that in many cases it is impossible to state at what rate tax has been or will be levied on the particular profits out of which dividends are paid. The dividends of a company may be distributed from profits made during the course of a financial or commercial year before the rate of tax is known, or may be distributed from reserves maintained for the equalisation of dividends and composed of profits earned in previous years. It should, therefore, be assumed by Income-tax Officers in connection with these particular certificates that tax has been levied in respect of the dividends at the rate current on the date on which the dividends were *declared* since this is the rate to be taken into account in dealing with a claim for a refund under section 48 (*1*).

(*iv*) The form of certificate also provides for cases such as that of the tea companies which do not pay income-tax on their entire profits and gains distributed as dividends.

(*v*) The amount of income-tax so assumed to be payable by the company in respect of the dividend declared has, under the provisions of section 16 (*2*) to be added to the net dividend received in calculating the total income of the individual shareholder.

(*vi*) The following instructions may with advantage be followed by persons granting certificates prescribed by section 20 of the Act :—

(1) The statutory form of certificate of deduction of income-tax prescribed by rule 14 of the Indian Income-tax Rules should invariably be used.

(2) Either (*a*) the certificate should be printed on the same sheet of paper as the actual warrant with a line of perforation to permit of its being detached, or (*b*) the dividend warrants should be machine-numbered while every certificate relating to a particular dividend should be given the same number as the corresponding warrant. There are cases in which Banks collect dividends on behalf of their constituents and companies send the banks consolidated dividend warrants in payment of all the dividends due in respect of the block of shares for which the bank is acting, and at the same time send separate certificates for the shareholders by whom the shares are owned. In such a case if certificates are issued to a Bank for say twenty constituents, relating to dividend warrant No. 1, the certificates should be numbered by hand 1/1, 1/2, 1/3 to 1/20.

(3) The practice adopted by certain companies of either attaching red slips to the certificates drawing the attention of recipients to the need for their careful preservation for a year or two or of printing this caution in red ink on the face of the certificate may be generally followed

(4) A note should be printed on the certificate to the effect that shareholders may claim refund of tax under section 48 (1) of the Act in respect of their dividends if their personal rate of tax is less than the maximum rate

83 *Annual return of employes.* (*Section 21*)—(i) Under section 21 read with rules 15, 16 and 17 a return in the form prescribed in rule 17 must be made of all employés deriving an income of Rs 2,000 per annum or over by the Government officers mentioned in rule 15, by every private employer and by, in the case of local authorities, companies or other public bodies or associations, the "principal officer" (see paragraph 7) "or the prescribed person" The provision that in the last mentioned case the return is to be made either by the principal officer or "the prescribed person" is designed to avoid difficulties experienced particularly in the case of companies, owing to the provision of the Act of 1918 which required that the return should always be made by the "principal officer" Where a company, for example, has got several places of business, it may be more convenient for the company that the returns under this section should be made not by the principal officer at the headquarters of the company but by officers at different branches, since this particular return has as a rule to be made to the local Income tax Officer, *i e.*, to the Income tax Officer of the place where the employés happen to reside The liability for making this return remains under section 21 with the principal officer unless another person is prescribed in the case of particular companies Such a person must be prescribed by means of a rule made by the Central Board of Revenue [see section 2 (*10*) and section 59 (*2*) (*e*)] The object of the return is to enable Income tax Officers to see that the tax has been deducted at the source under section 18 (*2*), to arrange for adjustments where the collections at the source have not been made correctly and to assess "salaried" persons under section 23, whether the tax has been collected at the source or not, where the salaried persons have other income than "salary"

(ii) This section prescribes that the return must be delivered to the Income tax Officer but does not state to what particular Income tax Officer the return should be made Every Income tax Officer has, under the provisions of section 64 (*4*), all powers conferred by or under the Act on an Income tax Officer in respect of

any income accruing or arising or received within the area for which he is appointed irrespective of whether the particular income is assessed by him or not. In most cases it is convenient that this return should be made to the Income-tax Officer of the area in which the employés reside, but in some cases it may be more convenient that the return should be made to the Income-tax Officer of the area in which the headquarters of a wide spread business is situated. It is for the Income-tax Commissioner in each doubtful case to decide to what particular Income-tax Officer this return should be sent.

(iii) The return prescribed under this section is the return of all employés who during the period of 12 months ending 31st March last were in receipt of salary of not less than the prescribed amount of Rs. 2,000, and the return must be furnished to the Income-tax Officer in the proper form before the 1st of May. The obligation to make this return is a statutory one and no preliminary notice or request from the Income-tax Officer is required. Failure to furnish this return is punishable under section 51 (c) of the Act.

84. *Return of income by companies.* [*Section 22 (1).*]—The return of the total income of a company must be furnished to the Income-tax Officer before the 15th day of June in each year in the form prescribed in rule 18, which also contains the form of the verification of such return. The obligation to make this return is a statutory obligation upon the "principal officer" (see paragraph 7) of the company, and it is not necessary that the Income-tax Officer should send any preliminary notice or request to the company or the principal officer concerned. Failure to furnish this return is punishable under section 51 (c) of the Act.

85. *Return of income by persons other than companies.* [*Section 22 (2)*].—(*i*) The form of return of total income of individuals' firms or Hindu undivided families is prescribed in rule 19 which also prescribes the form of the verification of such return. In this case no statutory obligation rests upon the individual, firm or Hindu undivided family to make such a return until a notice has first been served by the Income-tax Officer requiring such a return. The notice must allow a period of 30 days for the furnishing of the return. The only exception to this rule relates to the assessment of persons who are likely to leave India before the close of the financial year and are not likely to return. In such cases it will be sufficient if a period of not less than seven days is allowed to make the return. If, however, on receipt of such notice, the return is not furnished within due time, such failure to make a return is punishable under section 51 (c) of the Act.

(ii) An Income tax return is not a 'public document' and therefore no one has any *right* to inspect or to receive a copy of it The following persons should, however, in practice be allowed to do so —

(a) in any case the person who actually made the return

(b) any partner (known to be such) in a firm registered or unregistered to whose income the return relates and

(c) the manager of a Hindu undivided family to whose income the return relates or any other adult member of such family who has been treated as representing it that is on whom a notice or requisition has been served under section 63 of the Act

(iii) A return under section 22 on which the word loss has been written, without any figures or in which 'nil' has been entered against each item, is not a valid return (*cf* Calcutta High Court case Ram Kissendas Bagri *versus* Commissioner of Income tax, Bengal, II, Srinivasan's Tax Cases page 321) If, therefore such a return is filed by any person the Income tax Officer can proceed after issuing a notice under section 22 (4) and making enquiries, to assess him under section 23 (4) if he finds that such a course is justifiable

86 *Consequences of failure to furnish a return of income* — (i) Where a return is not furnished in due time, whether it be a statutory return which companies are required to furnish by the 15th of June under section 22 (1) or whether it be the return which other persons are required to furnish under section 22 (2), on receipt of a notice from the Income-tax Officer calling upon them to do so, the person failing to make the return is [illegible] liable to be prosecuted under section 51 (c) [illegible] under the proviso to section 30 (1) of the Act [illegible] ment made by the Income tax Officer upon the [illegible] person failing to make a return In the case of a registered firm, the Income tax Officer may also cancel its registration [illegible] until 14 days have elapsed from the [illegible] of a [illegible] Income tax Officer to the firm [illegible]

( ) Failure to make a return, [illegible] fault of any [illegible] whatever [illegible] currently made, except [illegible] that section a person [illegible] to make a return may, [illegible] month after the receipt of a notice of demand of the tax, apply to the Income tax Officer and [illegible] verted by sufficient cause from making the return the Income tax Officer shall cancel the assessment, [illegible] once without waiting for an application [illegible]

assessee, and proceed with the case *de novo*. Should the Income-tax Officer refuse to re-open the case under section 27, the assessee may appeal under section 30 to the Assistant Commissioner, but if the Income-tax Officer does re-open the case, whether of his own accord on an application under section 27 or under the orders of the Assistant Commissioner under section 31 on an appeal, and the assessee fails again to make a return, the same provisions apply and no appeal lies against the assessment. Section 22 (*2*) makes it *obligatory* upon the Income-tax Officer to call for returns from all assessees, and as the success of the administration of the Act is largely dependent upon assessees making returns of their income, every effort should be made to get every assessee to file a return. At the same time it is desirable that, with due regard to the fiscal interests of the Government, all income-tax officials should administer the Act in a sympathetic spirit, and in particular should give assistance to assessees if they find any difficulty in filling up their returns.

(*iii*) Sub-section (*3*) of section 22 is a new provision the effect of which is that where a person has not furnished a return in due time or having furnished a return discovers any omission or wrong statement therein, he may furnish a return or a revised return before the order of assessment is passed so that where such a return or revised return has been made the assessee may not be prosecuted for failing to submit a return in due time under section 51 (*c*) and may not be penalised under section 28 for making a wrong statement in the original return.

87. *Consequence of false returns. Concealment of income and improper distribution of profits.* (*Section 28*).—(*i*) A person who makes a false return under section 19-A, or section 22, or sub-section (*2*) of section 26-A, or sub-section (*2*) of section 32, or sub-section (*2*) of section 33-A, is liable to be punished under the provisions of section 177 or section 182 of the Indian Penal Code which run as follows :—

'177. Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. * * *.'

"182. Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause such public servant—

(*a*) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(*b*) to use the lawful power of such public servant to the injury or annoyance of any person

shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both."

(ii) The returns under section 19 A or section 22 or sub-section (2) of section 26 A or sub section (2) of section 32 or sub section (2) of section 33 A must be verified in the prescribed manner and under section 52 of the Act a false statement in any such verification is an offence punishable under section 177 of the Indian Penal Code

(iii) Apart from these legal penalties under section 28 of the Act if the Income tax Officer the Assistant Commissioner or the Commissioner is satisfied that an assessee has concealed the particulars of his income or has deliberately furnished inaccurate particulars of such income and has thereby returned it below the real amount he may direct that the assessee shall pay a penalty not exceeding the amount of the tax which would have been avoided if the return had been accepted as correct If the profits of a registered firm have been distributed otherwise than in accordance with the shares of the partners as shown in the instrument of partnership registered under the Act governing such distribution and any partner has thereby returned his income below its real amount the Income tax Officer Assistant Commissioner or Commissioner as the case may be may impose similar penalty on the partner concerned and no refund or other adjustment shall be claimable by any other partner on this account

(iv) Penalty under section 28 is leviable in the course of any proceedings under the Act provided that the facts justifying the imposition of a penalty under the section are established The Act however does not authorise the imposition of a penalty in the course of proceedings under section 34 for a supplementary assessment in respect of any concealment of income in the course of proceedings in connection with the original assessment in the case concerned (cf Allahabad High Court decision in the case of Mayaram Durga Prasad *versus* Commissioner of Income tax United Provinces) The offender will however be liable to a prosecution under section 52 of the Act or any section of the Indian Penal Code other than section 177 thereof referred to in section 52 of the Income tax Act

(v) Clause (4) of section 28 however provides that where a penal assessment under that section is imposed by the revenue authorities no criminal prosecution for an offence shall be instituted on the same facts It is obviously not desirable that there should be room for a possible conflict between the revenue and judicial authorities and it is also unreasonable that a double punishment should be provided for

(vi) A criminal prosecution cannot under section 53 (1) of the Act be instituted except at the instance of an Assistant Commissioner In most cases action under section 28 will be effective although in more serious cases a prosecution might be launched

88. *Production of accounts.* [*Section 22 (4).*]—(*i*) Under sub-section (*4*) of section 22 the Income-tax Officer is empowered to call upon any person liable to make a return to produce such accounts or documents as he may require. It does not, however, empower him to ask the assessees to prepare accounts like a profit and loss account which they do not already possess and do not require for their own purposes; all that it empowers the Income-tax Officer to do is to call for accounts and documents which are or are believed to be, in existence. The production of accounts may be called for whether a return has or has not been made. As stated in paragraph 86, it is always desirable in the interests both of the assessees and of the Government that Income-tax Officers should obtain a return of income before they make an assessment. If, however, such returns are not forthcoming, they should, so far as possible, obtain the accounts of the assessee. Again, if a return is made the Income-tax Officer has power to call for accounts wherever he considers it necessary for the purpose of testing the accuracy of the return. It is, however, desirable that the least possible inconvenience should be given to assessees by the detention of their accounts by Income-tax Officers and Income-tax Commissioners should take steps to see that accounts are not detained for any undue time or for any unnecessary purpose. Steps should be taken to secure that the services of competent and reliable Accountants where employed by assessees should be utilised to the fullest extent by the Income-tax Officers. The latter from their experience should soon know what particular Auditors can be relied upon to give accurate figures. Where a statement of profit and loss filed by an assessee has been certified as correct and complete by such an Accountant, the Income-tax Officers should, unless they see reason to the contrary, accept the statement as correct and complete with regard to the facts mentioned in it, although he will frequently have to call for details showing how various figures are made up. But in such cases the Accountant himself when authorised by the assessee to appear on his behalf should be asked to supply the details. Income-tax Commissioner should take steps to secure that the services of such Accountants are fully availed of.

(*ii*) The proviso to sub-section (*4*) of section 22 prevents any Income-tax Officer from calling upon an assessee to produce books of account going back for a period of more than three years prior to the "accounting period". This limitation applies merely to books of account; it does not apply to documents. No limitation is placed by the Act upon the power of the Income-tax Officer to call for documents of any date.

(*iii*) Neglect to furnish accounts or documents asked for by the Income-tax Officer under section 22 (*4*) is punishable under section 51 (*d*) and, further, under the provisions of section 23 (*4*) read with section 30 (*1*), any person who fails to comply with the

requisition of the Income tax Officer for the production of accounts or documents may not appeal under section 30 against the assessment made whether he has made a return or not If the assessee is a *registered* firm the Income tax Officer may cancel its registration He is in exactly the same position as a person who did not make a return in the first instance, his only remedy being that described in paragraph 86 (*i e* , under section 27)

89 *Evidence in assessment proceedings other than returns and accounts of assessee* —(*i*) In addition to his general power to call for accounts, the Income tax Officer where he believes that a return made under section 22 (2) is incorrect or incomplete, has power to call upon an assessee to attend or to produce or cause to be produced evidence of the correctness of his return If an assessee fails when required by an order under section 23 (2) to attend or to produce evidence in support of his return, he is not liable to any penalty under section 51, but failure to comply with such orders has the result of placing the assessee in exactly the same position as a person who failed originally to make a return [see section 23 (4)], that is, he may not appeal against the order of assessment or take any action other than action under section 27 as described in paragraph 86 If the assessee is a *registered* firm, the Income tax Officer may cancel its registration

(*ii*) Under section 23 (3), the Income tax Officer is empowered to utilise any evidence bearing on the assessment which he may obtain of his own motion, while under sections 37 and 38 he can enforce the attendance of any person for this purpose and compel the production of the information that he requires

(*iii*) The following special instructions should be observed in calling for information from railway administrations —

(*a*) The information must be relevant to an individual assessment Income tax Officers should not, for instance, ask for a complete statement of all consignments to or from a particular station

(*b*) The demand for information must be couched in definite terms For instance, it must state whether the particulars are required with regard to outgoing or incoming consignments and name the stations with regard to which the information should be collected

(*c*) The requisition for information should always be sent to the Agent of the Railway administration concerned There is no objection, however, to Railway officers furnishing information direct to the income tax authorities without the intervention of the Agent where the Agent has no objection to their doing so

Section 37 gives power to call for railway books

(iv) Except as provided in section 19-A and Rules 42 and 43, a company should not be required to furnish the Income-tax Officer with a return of the persons (with their addresses) for the time being appearing on the share register of the company and the amounts of the dividends paid or payable to such persons during any particular period. Such a duty would be burdensome to the company with no corresponding advantage to the administration. It is for this reason that in section 39 of the Act provision is made that the share register, the register of debenture holders and of mortgagees of any company are open to the inspection of the income-tax authorities, who may also take copies or cause copies to be taken of any entries in such registers. Since the power to inspect, and take copies of such register is specifically conferred by section 39, no income-tax authorities utilising these special powers can be called upon to pay any fee for inspection or copies under the Companies Act.

(v) Under section 20-A and Rules 42-A and 43-A any person responsible for paying any interest not being "interest on securities" is required to furnish on or before the 15th June every year to the Income-tax Officer in whose jurisdiction he resides, a return showing the names and addresses of all persons to whom during the previous year he has paid interest or aggregating the interest exceeding Rs. 2,000 together with the amount paid to each such person.

(vi) The Bill as originally framed contained a provision empowering an Income-tax Officer to require information to be given regarding specific payments shown in the accounts of an assessee where there is reason to believe that such payments will become liable to tax in the hands of the recipients. This particular provision was omitted by the Select Committee on the Bill as being entirely unnecessary because Income-tax Officers have ample powers to disallow any payment shown in the accounts of an assessee where proof of the payment is not forthcoming.

(vii) Section 37 also provides for the issue of commissions. The scale of diet money and travelling expenses for witnesses summoned under this section should be that prescribed for attendance in civil courts in the Province concerned.

90. *Personal attendance of assessee.*—(i) While section 23 (2) empowers the Income-tax Officer to require a person making a return to attend at his office, under the provisions of section 61 any person required or entitled to attend before any income-tax authority may either attend in person or be represented by a person duly authorised by him in writing. The penalty to which an assessee who failed to attend when required to do so by an Income-tax Officer was liable under the Act of 1918, has been omitted from section 51 of the present Act. While there is no obligation on an assessee to attend in person at any stage of the assessment

proceedings or before any income tax authority in connection with any proceedings under the Act, and while he may be represented at any such proceedings by any person he pleases to authorise in writing failure to attend or to be so represented has the result that the assessee loses any right of appeal against the assessment

(ii) It should, however, be particularly noted that the provisions of section 61 merely refer to attendance Returns and verifications required under the Act must be signed either by the assessee himself or by some representative duly authorised for the purpose in proper legal form so that his acts will bind his principal

(iii) It is desirable that tax payers should be allowed to use whatever agency they please for the purpose of representing their case, and whatever person they authorise to represent them whether he be an employé, an accountant or any other person, has presumably been selected by them as the person having the best knowledge of their accounts and financial position, and such person is entitled to appear before any income tax authority and to give explanations and produce evidence regarding any points of doubt that may arise

91 *Assessment of Bogus Companies and Firms (Section 23 A)* — (i) The object underlying the introduction of this section is to prevent the avoidance of income-tax and super tax by companies, firms or other association of individuals by the adoption of certain devices Where the Income tax Officer is satisfied that a company, firm or other association of individuals is adopting any of the devices mentioned in sub sections (1) and (2) of section 23-A he should obtain the approval of the Assistant Commissioner to assess the individual members on their share of the profits and gains and if it is accorded proceed to assess accordingly The Assistant Commissioner should give the firm, company or association of individuals as the case may be, a hearing before he directs the Income-tax Officer to refrain from determining the sum payable as income-tax by it and make the assessment on the members

(ii) Section 23-A is not one of the sections mentioned in section 58 Consequently "Income-tax" in section 23 A (1) and (2) means "Income tax and super-tax" It follows that the Income-tax Officer under these sub sections must refrain from determining the amount of their income tax or super tax payable by the firm, association or company

92 *Assessment of temporary residents* —(i) Before the passing of the Indian Income-tax (Second Amendment) Act, 1933, there was no provision in the Act for the issue of a notice under section 22 (2) before the close of the financial year for the purposes of assessing the income of that year The absence of such a provision enabled touring theatrical companies and other temporary

residents as also persons about to change their more permanent residence to escape income-tax by leaving the country before the close of the year. The new section 24-A is designed to bring such assessees under assessment. Where it appears to an Income-tax Officer that a person may leave India during the current year or shortly after its expiry and may not return to India he may serve a notice upon him requiring him to furnish a return in the same form and verified in the same manner as a return under section 22 (2), of his total income for each of the completed previous years from the period from the expiry of the last previous year for which he has been assessed and of his estimated total income for the period from the expiry of the last such completed previous year to the probable date of his departure. The minimum period within which such a return should be required to be made is seven days. The Income-tax Officer may in the exercise of his discretion allow any period exceeding this limit according to the circumstances of each case. Such a notice is a notice under section 22 (2) and all the provisions relating to assessment apply thereafter. The assessment shall be made for each completed previous year included in the period of assessment at the rate at which such total income would have been charged had it been fully assessed. As regards the period from the expiry of the last of such previous years to the probable date of departure the Income-tax Officer should estimate the total income and assess it at the rate in force for the year during which the assessment is made.

(*ii*) It should be particularly noted that this section should not be used to assess an income which has escaped assessment or has been assessed at too low a rate in respect of which the Income-tax Officer cannot issue a notice under section 34.

93. *Assessment of deceased persons.* (*Section 24-B*).—(*i*) This section provides that an executor, administrator, or other legal representative of a deceased person shall be treated as an assessee for the purposes of an assessment on the income of a deceased person. There was no provision in the Act for the assessment of the incomes of deceased persons before the passing of the Indian Income-tax (Second Amendment) Act, 1933, with the result that such incomes escaped tax. The Act as now amended has stopped that loophole. The liability of an executor, administrator or other legal representative in respect of tax due by the deceased is, however, confined to the payment of tax to the extent to which the estate of the deceased is capable of meeting the charge. The charge of income-tax on the income of a deceased person does not rank in any way prior to other charges to which the estate may be liable.

(*ii*) The procedure to be followed in making such assessments is as follows. Where no notice has been served on a deceased person under section 22(2) or 34 as the case may be, a notice may

be served on the executor, administrator or other legal representative and an assessment made as if such person was the assessee Where notice has been served on a deceased person, but no return has been made or where the return made is in the Income tax Officer s opinion incorrect or incomplete the Income tax Officer may assess the income and determine the tax payable For the purposes of making such assessments, the Income tax Officer may require the executor, administrator or legal representative of the deceased to produce documents or other evidence under sections 22 and 23 All the provisions of the Act relating to the assessment and collection of a tax apply to these cases See also paragraph 118

(iii) Where an assessment is made in pursuance of sub sections (2) and (3) of section 24 B, the assessment should be regarded as one made under section 23, since the legal representative of the deceased is for the purposes of the Act the assessee All the consequences of an assessment under section 23 will therefore follow *e g* , a notice of demand can be issued to the legal representative under section 29, and an appeal can be filed by him under section 30 or other relief sought by him in the circumstances and to the extent that similar relief could have been sought by the assessee had he been alive

94. *Set off of loss under one head of income against income under another head* —(i) Under the Act of 1918 it was the aggregate amount chargeable under each of the separate heads mentioned in sections 7 to 12 of the Act that determined the total and taxable income of an assessee so that when a person carried on a trade or profession and also had an income from house property, if he had actually incurred a loss from the trade or profession the figure adopted under that head in arriving at the aggregate amount of the income chargeable to tax was *nil* and not a *minus* sum Under the provisions of section 24 of the Act a loss under one head of income may now be charged against profits under another in the same year Where a minor has been admitted to the benefits of a partnership a claim can be put forward on his behalf for set off under sub section (2) of section 24 in respect of his share of any loss sustained by the firm See paragraph 10

(ii) Sub section (2) of section 24 only applies specifically to the case of a registered firm but the Madras High Court in a case (Commissioner of Income tax, Madras *versus* M Ar Ar Arunachalam Chettiar, 1 I T C 278), has held that under the provisions of section 24(1) a partner in an unregistered firm is entitled to set off his share of the net loss incurred by the firm in the same circumstances and to exactly the same extent as a partner in a registered firm This view has been upheld by the Privy Council in the case of Rm Ar Ar Rm Arunachalam Chettiar *versus* The Commissioner of Income tax, Madras (Privy Council Appeal No 29 of 1935) The result is as follows A firm owning property or

having income from a business and being in receipt of interest on securities would, under the provisions of sub-section (*1*), be entitled to set-off a loss from the business against its income chargeable in respect of interest on securities under section 8 or property under section 9. But it might happen that a firm might incur a net loss, in which case it would not be liable to tax. Sub-section (*2*) specifically provides for such a case.

Illustration.—A firm has property the annual value of which is Rs. 2,000, has income from interest on securities amounting to Rs. 1,000 and carries on a business from which it incurs in one year a loss of Rs. 10,000. The firm is entitled under the provisions of sub-section (*1*) section 24 to set-off the loss from business against the annual value of the property and the interest on securities, and its total income would be *minus* Rs. 7,000. *A* who is a partner in the firm having a share of one-half in the profits thereof, has other personal income of Rs. 6,000 from interest on securities. He is entitled under the provisions of sub-section (*2*) to set-off his share of the net loss from the firm (*viz.*, Rs. 3,500) against his personal income and would be assessed on a total income of Rs. 2,500.

(*iii*) Where an individual is a partner in two separate firms of which one is registered and the other unregistered and has no separate personal income, he should be allowed, in dealing with any application for refund under section 48, to set-off his share of any net loss incurred by the unregistered firm against his share of the profits of the registered firm. For example, 'A' having a half share in an unregistered firm, which incurred a net loss of Rs. 2,000 in one year, had in the same year no personal income liable to assessment to income-tax in his own hands, but had a similar share in another registered firm which had made a net profit of Rs. 10,000. Such cases will be rare and should be dealt with on the basis of real income, *i.e.*, in the case above quoted 'A' should get a refund so adjusted that he shall suffer finally tax of 5 pies in the rupee on his real income of Rs. 5,000 *minus* Rs. 1,000 *i.e.*, Rs. 4,000. The same principle would apply if both firms were registered. Where the situation is reversed that is where the registered firm makes a loss and the unregistered firm a profit obviously no relief can be given. Nor can an unregistered firm claim to set-off losses of the individual partners against the income of the firm. But a partner in a registered firm should be allowed to set-off loss incurred in his individual capacity against his income as partner in dealing with any application under section 48.

(*iv*) Similarly if 'A' has a loss of Rs. 1,000 in business, an income of Rs. 1,000 from interest on securities and an income of Rs. 3,000 from dividends, he should be allowed to set-off his loss of Rs. 1,000 against his income of Rs. 4,000 and should be taxed on the balance of Rs. 3,000.

(v) In the same way, if A borrows money to buy securities or shares and the interest on the loan exceeds the interest or dividend that he receives, he is entitled to set off the excess of the interest paid over the interest or dividend received against any other taxable income See paragraph 39

(vi) The correct procedure in such cases is to ascertain the total income after allowing the set off, calculate the tax on that at the appropriate rate (apply section 17 if the circumstances justify such a course), credit the tax "suffered" on the dividends on the one hand and debit any refunds granted under section 48 on the other and collect or refund the balance as the case may be

(vii) From the point of view of equity it is obviously reasonable to allow a set-off in these cases, from the legal point of view it is incorrect to argue that section 24 (1) is inapplicable to such cases on the ground that income from dividends or income derived from a firm is not (from the point of view of the shareholder or partner) income falling under any of the heads mentioned in section 6—Section 24 (1) Obviously such income must fall under one of these heads, otherwise (a) it could not be included in the total income of the shareholder or partner, but it is so included—section 16, and (b) the shareholder or partner could in no circumstances be assessed individually on such income, but under section 14 (2) he is assessable on such income if it so happens that the company or firm has not been assessed Consequently such income from dividends or from a firm must fall under one of the heads in section 6 Income from dividends should evidently be regarded in the hands of the shareholder as income from "Other sources," while income from a firm should be regarded in the hands of the partner as income from "Business" On the other hand the partner or shareholder is not an "assessee" in respect of such income unless the firm or company has not been assessed

95. *New business* —As stated in paragraph 14 assessments under the Act are made on the profits of the previous year" When a new business is started, therefore, no assessment will, as a rule, be made in the first year, and the assessment in the second year will be made on the profits of the preceding year The only exception is that referred to in the next paragraph

96. *Business closing down* —(i) The only exception to the general rule that assessments are made on the profits of the previous year is contained in section 25 (1) where, in order to guard against a possible loss of revenue owing to delay in making assessments on the profits of businesses, professions or vocations that close down during the course of a financial or commercial year, it is provided that in such cases in addition to the assessment on the income of the preceding year a further assessment may be made in the year in which a business, profession or vocation is closed down, on the income of that year Sub section (2) of that section imposes a statutory obligation on persons discontinuing a

business, profession or vocation *to give notice of such discontinuance* within 15 days of the discontinuance.

(*ii*) It is to be noted that these provisions apply only to businesses, professions, or vocations, that is to say, to profits or gains taxable under sections 10 and 11, and further, that they only apply to any business, profession or vocation on which income-tax was not at any time charged under the provisions of the Indian Income-tax Act, 1918. They do not apply to any business, profession, or vocation on which income-tax had been charged under the provisions of that Act. as these are subject to the special provisions of section 25 (*3*) which are described below.

(*iii*) The power to make this additional assessment under section 25 (*1*) is a *discretionary* power which may be exercised whether the business, etc., is a purely temporary business commencing and closing down in the same year, or whether it is a business that has been in existence and has been previously taxed under the present Act. It should only be used in cases where there is reason to anticipate that the tax may not be collected unless the assessment is made in the year in which the business, etc., closes down. Where there is reason to believe that there will be no difficulty in making the assessment and collecting the tax in the usual manner, that is, in the year after the business closes down and on the profits of the year in which it did close down there is no need to use the special powers conferred by this sub-section.

(*iv*) The profits to be taxed under the provision of section 25 (*1*) are the profits accruing between the end of the last "previous year" of which the profits have been taxed and the date of the discontinuance of the business. Further, the rate to be applied in taxing the discontinued business under sub-section (*1*) is the rate in force in the year in which the assessment is made.

(*v*) Where a business, profession or vocation had tax charged on it under the provisions of the Income-tax Act of 1918, the provisions of sub-section (*1*) to section 25 cannot be brought into use for the assessment of any such business. On the contrary for reasons given in paragraph 14, it is, under the provisions of subsection (*3*) of section 25, not liable to tax in respect of profits or gains for the period between the end of the last "previous year" and the date of discontinuance, but is *entitled* to substitute the *profits of that period* for the profits of the last "previous year". For example, in the case of a business whose "previous year" ends on 31st March, if it closed down on March 31st, 1923, its assessment for 1922-23 will be on the profits for the year ending 31st March 1922, or at its option, on the profits of its year ending 31st March 1923. If such a concern closed down on 30th April 1922, it would still be assessed in the year in which it closed down, but the assessment would be on the year's profits to 31st March 1922, or at its option on the profits of the month of April 1922. If, however, the concern's "business year" ends on 30th April and it

closes down on 30th September 1922, its assessment in the year 1923-24 would be on the profits of its year to 30th April 1922 or at its option on its profits from 1st May 1922 to 30th September 1922. This special provision applies only to a business, profession or vocation on which tax was charged under the Act of 1918, and when a claim for this concession is made, it must be supported by proof that tax had been charged under the Act of 1918 in respect of that very business, profession or vocation.

(*vi*) An assessee should be allowed the benefit of section 25(3) if (*1*) he has (for example) both a business and a profession and discontinues only one of them or (*2*) has more business than one and discontinues one or more but not all of them provided that they are genuine distinct businesses for which separate accounts are maintained, and not mere branches of a single business. The section should, of course, only be applied to the income of any profession or business that is actually discontinued.

(*vii*) A claim to be assessed under this sub-section may be admitted if it is made not later than the end of the year following that in which the business, profession or vocation is discontinued.

N.B.—The provisions of section 25 apply to the complete stoppage or discontinuance of a business, profession or vocation and do *not* apply to any change in the *proprietorship*. Where there is any change in the proprietorship merely the provisions of section 26 apply (see paragraph 98).

(*viii*) Where a business, profession or vocation is completely discontinued and is not merely transferred from one proprietor or set of proprietors to another, the person who carried on the discontinued business is responsible for the payment of the tax, and where the proprietorship was vested in a firm, section 44 specifically provides that the persons who were members of the firm on the date of such discontinuance are jointly and severally liable to any tax due from the firm.

97. *Change in the constitution of a firm.* [*Section 26 (1).*]—As amended by the Indian Income-tax (Amendment) Act, 1928 (III of 1928), section 26 now consists of two parts, the first part dealing with changes in the constitution of a firm, and the second part with changes in the ownership of a business, profession or vocation. Under section 26 (*1*) the assessment on the firm and on the members thereof shall, subject to the provisions of this Act, be made as if the firm had been constituted throughout the previous year as it is constituted at the time of making the assessment and as if each member had received the share of the profits of the year proportionate to his interest in the firm at the time of making the assessment. For example, if 'A' happens to be a member of a firm when an assessment is made in the year 1922-23, even if 'A' has newly succeeded to the partnership just before the assessment is made, he is deemed, for the purposes of both income-tax and super-tax, to have received out of the profits of the year 1921-22 (which are the profits assessable in the year

1922-23) the share to which he would have been entitled had his share in the firm been the same as it was in 1922-23 when the assessment was made.

98. *Succession.* [*Section 26 (2).*]—(*i*) This sub-section which incorporates the Privy Council decision in the Western India Turf Club case, applies only to cases in which a business, profession, or vocation has changed hands. The assessment must be made on the successor as though he had been carrying on the business, profession or vocation and as if he had received the whole of the profits for the year. The calculation of the profits should of course be made with reference to the state of affairs in the accounting year but the rate of tax to be applied will be that applicable to the successor.

(*ii*) Where one person succeeds to several businesses, a single assessment should be made on the successor in respect of the profits of all his predecessors and of himself, if he existed or did business in the previous year, taken together. Losses of any predecessor should be set off against the profits of the others or of the successor.

(*iii*) The question whether a succession has taken place is a question of fact which must be decided with reference to the facts of the particular case, but it may be laid down that there cannot be succession to part of a single business. It frequently happens that one person is conducting two or more separate businesses to each of which there can be a succession. If the particular business is separable as a whole from the other activities of the assessee, there can be a succession to it.

(*iv*) When in the year in which the first assessment is made after succession to a business has occurred, the successor wishes to adopt a different accounting period from his predecessor's, the request should be treated as involving a change of accounting period. If the result of this change is to leave an interval between the end of the last complete accounting period of the predecessor and the beginning of the first accounting period of the successor, the procedure prescribed in paragraph 6 above for the assessment of an assessee who has been permitted to change his accounting period should be followed in all respects, and the nature of the change of accounting period permitted, and the conditions on which permission is granted should be clearly recorded by the Income-tax Officer in his assessment order.

(*v*) When an assessment has been made under section 26(2) on the successor to a business on the profits of the predecessor and it is found that the profits of the predecessor in the year before the year of succession have escaped tax, wholly or in part, whether the succession took place before or after the assessment of the predecessor in the previous year, an assessment may be made under section 34 on the successor and not the predecessor, because the expression "previous year" in section 26 (2) must refer

to the "previous year as defined in section 2 (11) of the Act for the purpose of the assessment to be made and not to the year previous to that in which the assessment is made, if that is different The fact that the succession resulted in a change in the status of the assessee does not alter the situation

99. *Orders of assessmnct*—When an assessment order has been passed under section 23, any assessee who applies to the Income tax Officer for a copy of the order must be supplied by Income tax Officer with a copy, free of charge subject to the following conditions —

(a) that not more than one copy of an assessment order should be supplied free and

(b) that a copy of an assessment order applied for more than one year after the order was passed should not be supplied free of charge unless the applicant satisfies the Income tax Officer that it is required for his use in some proceedings which are pending under the Indian Income tax Act 1922 with reference to the particular assessment covered by the order and which are not time barred

Proposed representations to higher authority which are not covered by any provision of the Act will not be regarded as proceedings pending under the Act

99-A One copy of any order against which an appeal cannot be submitted in the prescribed form unless accompanied by such a copy (i e , any order under one of the following section 26 A, 27, 48, 48 A and 49) should be supplied to the assessee free of cost and without application as soon as the order has been passed One copy of any other order should be supplied to the assessee on application free of cost If additional copies are required in either case, a charge should be made

100. *Notice of demand*—The notice of demand referred to in section 29 and prescribed in rule 20 draws a clear distinction between the cases where an appeal lies against an assessment and where an appeal does not lie and shows the appropriate remedy to an aggrieved assessee in either case These notices of demand should, so far as possible contain the demand both on account of income tax and super tax and since the total income has to be ascertained in every assessment for income tax in order to determine the rate at which income tax shall be payable on any income for which the assessee is responsible for direct payment and as it is on the same total income that super tax is leviable, it is desirable that, so far as possible in the interests of economy and convenience to assessees the assessment both of income tax and super tax should be made simultaneously

101. *Appeals to Assistant Commissioner*—(i) The cases in which an appeal may lie to an Assistant Commissioner against

the orders of an Income-tax Officer are specified in detail in section 30. As stated in paragraph 50, it is necessary that every effort should be made to get tax-payers to file returns of income and the restrictions on appeal contained in the proviso to section 30 (1), which definitely forbid the entertainment of any appeal against an assessment where the Income-tax Officer has been compelled to make the assessment under section 23 (4) (i.e., in cases where an assessee has failed to make a return or has failed to produce his accounts when called for or has failed to produce any evidence in support of his return), should be rigidly adhered to. Under no circumstances may any appeal be entertained in these cases.

(i) Section 30 also allows appeals to the Assistant Commissioner against the refusal of an Income-tax Officer to re-open a case under section 27 and also against the orders of an Income-tax Officer imposing a penalty under section 25 (2) or section 28.

(ii) Section 30 allows an appeal against an order of an Income-tax Officer refusing to register a firm under section 26-A. Any party, whether the firm itself or a partner, aggrieved by the Income-tax Officer's order can appeal to the Assistant Commissioner against it. The Commissioner can also exercise his powers of revision under section 33 and interfere with the Income-tax Officer's orders registering a firm or refusing registration.

(iii) Where the determination of the precise amount of loss sustained by an assessee in a particular year is material, for example, where the assessee is a firm and the amount of loss sustained by the firm affects the assessments of the partners, an appeal to the Assistant Commissioner should be admitted under section 30 against the Income-tax Officer's decision as to the amount of loss unless, of course, the case has been decided under section 23 (4). Similarly in cases of assessments under section 23 (1) or section 23 (3), where no demand is due because the income ascertained prior to giving an allowance on account of depreciation is less than the amount of this allowance, an appeal should be allowed against the Income-tax Officer's decision as to the amount of actual income against which the depreciation allowance is to be set off.

(iv) The form in which an appeal must be presented to the Assistant Commissioner is specified in rule 21 and that form must also be verified in the manner prescribed in the same rule. Any false statement in the said verification is punishable under section 52.

(v) An Assistant Commissioner should not hear appeals against his own orders passed as Income-tax Officer. When an Income-tax Officer on appointment as Assistant Commissioner, acting or permanent, is not transferred to another Assistant Commissioner's range, appeals against his orders as Income-tax Officer

should be heard by another Assistant Commissioner appointed under section 5 (4) to hear such appeals

102. *Powers of Assistant Commissioner in dealing with appeals.* (*Section 31*)—(i) The provisions of this section have been re-worded in order to make it clear that the Assistant Commissioner in entertaining an appeal has power to remand a case to the Income-tax Officer for report or disposal on its merits and also that the Assistant Commissioner is not required to pass orders on the actual date of hearing, but may pass orders after the last day of hearing

(ii) When a document purporting to be an appeal under section 30 is filed against an assessment purporting to have been made under sub section (4) of section 23 it should be admitted as an appeal in Bihar and Orissa (see *Kunwarji Ananda*, 5 I.T.C. 417); elsewhere, it should be treated as an application for the admission of the appeal In neither case should the Assistant Commissioner make an *ex parte* order declining to entertain the appeal on the ground that by reason of the proviso to sub-section (1) of section 30 no appeal lies The assessee should be given a hearing on the preliminary issue whether the appeal lies, and a finding should be recorded on that issue (The notice giving the assessee an opportunity of a hearing should not be issued in Form I. T -18, except in Bihar and Orissa) The decision on this preliminary issue will depend on whether the assessment expressed to have been made under sub-section (4) of section 23 was in fact capable of being made under that sub section If the decision on this issue is adverse to the appellant, the appeal will be dismissed (in Bihar and Orissa) or its admission refused (elsewhere) on the ground that no appeal lies

(iii) An Assistant Commissioner in dealing with an appeal *may enhance the assessment made by the Income tax Officer*, but under the proviso to sub-section (3) he must first give the appellant a reasonable opportunity of showing cause against the enhancement The appellant in such a case may, under section 32, appeal to the Commissioner against the order of enhancement.

(iv) Appeals should never be simply *dismissed for default of appearance*—they should always be decided *on their merits*, and a reasoned decision written, whether the appellant appears or not If the notice of hearing has not been served on the appellant in time to permit of his appearing in person or by pleader at the time and place fixed for the hearing of the appeal the appeal should not be disposed of, but should be adjourned and a fresh notice issued to the appellant

(v) In dealing with an appeal against an assessment [illegible] section 34 the Assistant Commissioner can deal [illegible] the part of the income that has escaped assessment at [illegible] assessment or with any enhancement of rate at [illegible] ment He must not therefore entertain any [illegible]

any reduction of the amount determined at the original assessment as the amount of the assessee's income from any source that did not escape assessment at the original assessment.

103. *Appeals to Commissioner.*—No second appeal lies from orders passed by an Income-tax Officer. One appeal is allowed to the Assistant Commissioner under section 30. The only cases in which an appeal may be made to the Commissioner are against special orders passed by an Assistant Commissioner himself, *viz.*, an order imposing a penalty under section 28 or an order enhancing an assessment in the course of an appeal. No appeal lies to the Commissioner in any other case.

103-A. *Orders in appeal.*—A copy of the appellate order should be supplied to the assessee if he applies for it, free of cost. Additional copies should be charged for.

104. *Commissioner's power of revision.* (*Section 33*).—(*i*) The period within which an Income-tax Officer may assess income that has escaped assessment is restricted by section 34 and the time within which an Income-tax Officer, Assistant Commissioner or Commissioner of Income-tax may correct a mistake apparent on the face of the record by section 35. The Commissioner acting under section 33 cannot extend this period of limitation though he can revise, after it has expired, action validly taken within it. If a Commissioner of Income-tax desires to exercise his power of revision in any case where more than a year has elapsed since the passing of the last order by the subordinate authority he should not do so without first consulting the Central Board of Revenue.

(*ii*) Where in consequence of any appellate or revisional order, or any decision of a High Court on a reference, the assessment of a firm is modified in a manner entitling any partner to a reduction of the tax imposed on him individually, and for any reason such relief cannot be given by the Assistant Commissioner in the exercise of his appellate powers, the Commissioner of Income-tax should make the reduction under section 33 regardless of the period of one year mentioned above.

(*iii*) The Commissioner need not make a personal enquiry, if any enquiry is necessary, before exercising his powers of revision. He may cause an enquiry to be made by a subordinate officer.

(*iv*) The power conferred by this section on a Commissioner can only be exercised once in any particular case. A Commissioner who has once "declined to interfere" under this section is debarred from subsequent action under that section just as he would be if he had passed an order modifying the assessment.

(*v*) An order under section 33 merely declining to interfere is not an order "prejudicial to the assessee". A Commissioner is

therefore not bound to hear an assessee or his representative before rejecting a revision petition. The Act, of course, does not contemplate such petitions.

(vi) The decision of a Board of Referees under section 33-A is not subject to appeal to any Income-tax authority and cannot be revised by the Commissioner in exercise of his powers under section 33

104-A. *Reference to Board of Referee* (*Section 33 A*)—No time is prescribed in sub section 3 of section 33-A within which the Commissioner should refer an appeal to a Board of Referees But every effort should be made to avoid delay in making these references So far as possible the reference should be made within 60 days at most of the receipt of the appeal

105. *Assessment of income which has escaped assessment in previous years*—(i) Under the provisions of section 34 where income chargeable to income-tax has escaped assessment in any financial year or has been assessed at too low a rate, the Income-tax Officer may commence proceedings at any time within one period of twelve months reckoned according to the Gregorian Calendar from the end of the financial year in which the income so escaped assessment in order to get a full or proper assessment All that section 34 requires the Income tax Officers to do within the statutory period of one year is to *commence* proceedings for assessment It is not necessary that the proceedings should be completed within that period

(ii) A notice under section 34 need not specify the detailed grounds on which it is proposed to re open the assessment

(iii) The following form has been prescribed for the notice under section 34 —

Notice under Section 34 of the Indian Income-tax Act (XI-22).

Income-tax Office.

Dated

To

Whereas I have reason to believe that your income from * chargeable to income-tax in the year ending the 31st March 19 ,

(a) has wholly/partially escaped assessment.

---

*Here enter source

(a), (b) Unnecessary portions to be struck out

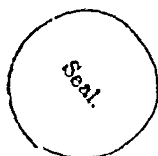
(b) has been assessed at too low rate, that is to say, at pies in the rupee instead of at pies in the rupee, and I therefore propose—

(a) to assess the said income that has escaped assessment,

(b) to re-assess your said income at the correct rate as aforesaid.

I hereupon require you to deliver to me not later than or within 30 days of the receipt of this notice, a return in the attached form of your income from all sources chargeable to income-tax during the said year ending

Income-tax Officer.



I. T. 90.

(iv) If it appears at any stage of the proceedings that no income has escaped assessment or been assessed at too low a rate, the Income-tax Officer must promptly stop the proceedings. It is not intended that when a man has concealed part of his income and the Income-tax Officer is proceeding to assess the income that has escaped taxation, the assessee should be entitled to have an assessment that has already become finally re-opened. Still less is it intended that the Income-tax Officer should be invested with wide powers of revision or review merely because he has formed a mistaken impression that certain income has escaped assessment or been assessed at too low a rate. His powers under section 34 can never be used, therefore, to effect a reduction of tax already levied.

(v) When income that escaped assessment or was assessed at too low a rate is subsequently assessed or fully assessed, the proviso to section 34 makes it clear that the rate applicable to such assessment or re-assessment is the rate in force at the time when the income should originally have been so assessed.

(vi) As regards appeal against an assessment under section 34 please see last sub-paragraph of paragraph 102.

106. *Rectification of mistakes in assessments.* (*Section 35*).—The power conferred upon the Commissioner or Assistant Commissioner of Income-tax or the Income-tax Officer by section 35 to rectify a mistake, whether on his own motion or on the application of an assessee, is confined to the rectification of mistakes patent from the facts or documents which were before

(a), (b) Unnecessary portions to be struck out.

him when he passed his revisional, appellate or original assessment order, as the case may be. This section does not confer on the Officers general power of review or authorise any assessee to introduce any new facts in connection with the said assessment. An Income-tax Officer should not correct mistakes in cases that have been dealt with by the Assistant Commissioner on appeal or the Commissioner of Income-tax in revision without a reference to the Assistant Commissioner or the Commissioner of Income-tax as the case may be.

107. *Elimination of pies from assessment.*—Section 36 provides that in income-tax assessments or refunds fractions of an anna less than six pies shall be disregarded, and fractions of an anna equal to or exceeding six pies shall be regarded as one anna. This provision has been made for the purpose of eliminating fractions of an anna from the accounts.

Income-tax Officers should also be instructed not to attempt to work out the Income-tax due on fractions of a rupee. Fractions of a rupee in *income* should be entirely disregarded.

108. *Income from properties or securities, etc., held under Trust* (*Sections 40 and 41*).—(*i*) Where any "property" (in the widest sense, but excluding a business) is held under Trust, the owner of that property, for the purposes of the Income-tax Act, is the beneficiary and the income is the income of the beneficiary. The Act does not permit of double taxation in the case of Trusts, *viz.*, once in the hands of a trustee and again in the hands of a beneficiary. Under these sections, the guardians, trustees, agents, Courts of Wards, etc., are required to pay tax on income, profits or gains received by them on behalf of beneficiaries in the same manner and to the same amount as the beneficiaries themselves.

(*ii*) The following instructions should be followed in the assessment of such income :—

(A) *In cases not falling under section 40 or 41*, the Trustee is merely to be regarded as an Agent. Receipt (actual or notional) of the income by him, or accrual of the income to him, is equivalent to receipt by or accrual to the beneficiary. Whether the income be distributed or allowed to accumulate the beneficiary is to be assessed in respect of it. There is no provision for taxing the Trustee in respect of it. The beneficiary may, of course, apply for any refund that may be due. The Trustee cannot do so.

(B) *In cases falling under* [illegible] same except that the Act [illegible] from the Trustee. (*a*) [illegible] *perty in the widest* [illegible] should be made on the [illegible] him and he may [illegible]

as though the income from the trust property were the total income of the Trustee. The assessment will of course be quite distinct from that on any other income in respect of which the same person may be Trustee and from that on the Trustee's own individual income. (*b*) *If the Trustee does not hold the entire property of the beneficiary*, the assessment on the total income of the beneficiary will be made in the name of the beneficiary and the tax in respect of so much of the income as is received by the Trustee will be recovered from the Trustee, who may also apply for any refund due in respect of such part of the income, which refund will be calculated with reference to the total income of the beneficiary. These instructions are equally applicable alike (*a*) where the Trustee simply receives dividends, interest on securities or other income on behalf of, and pays such income to, the beneficiary, and (*b*) where he receives dividends, interest, or other income on behalf of the beneficiary and pays a *fixed sum* out of the income to the beneficiary. If the balance of such income accumulates for the benefit of the beneficiary, it is to be regarded as his income of the year in which it accrues or arises to or is received by the assessee.

(*iii*) As regards the question as to who should apply for refunds in respect of interest on securities belonging to estates vested in the Administrator General or Official Trustee see paragraph 116 below.

109. *Income from business conducted by Trustees.*—(*i*) *Where a business is conducted by a Trustee or Trustees on behalf of* beneficiaries, the assessment is to be made on the Trustee or Trustees conducting such business, whether section 40 or 41 is applicable or not. If there are *Trustees*, they should be treated as an association of individuals [see judgment of the High Court, Lahore, in Hotz Trustees *versus* Commissioner of Income-tax, Punjab, Reference No. 8 of 1930 (V. Srinivasan Tax Cases, page 8)]. The tax will be assessed on and recovered from the Trustee. In the hands of the beneficiary or beneficiaries, the income of a business thus conducted by Trustees will not be taxed again. [Section 14 (2) (*c*)]. It will, therefore, be treated exactly as though it were a share of the profits of an unregistered firm. Its inclusion in his total income may raise the rate of tax leviable on the remaining income of a beneficiary or render that income liable to super-tax. The Trust income in the hands of the beneficiary should not *itself* be subjected to super-tax a second time, if it has borne super-tax in the hands of the Trustees, though legally it is liable to be so subjected. Similarly where the income of a trust is from sources other than business and the trustees are assessed to income-tax and super-tax on the total income of the trust, super-tax should not be levied a second time on what a beneficiary might get from that income as his share.

(ii) The above principles will apply even to cases in which there is a single trustee to execute the trust concerned

110 *Non residents Income other than from business* — Under section 4 (1) tax is payable in respect of all income, profits or gains accruing or arising in British India or deemed under the provisions of the Act to accrue or arise or to be received in British India, whether the recipient resides in British India or not There is little difficulty regarding income arising in British India and receivable by non residents under the heads "salaries," "interest on securities," "property," "professional earnings" or "other sources" In cases of income from "interest on securities" and "salaries" income-tax is deducted at the source, and in the case of income under the other heads a non resident is usually represented by an agent [section 42 (1)] No difficulty has been experienced in determining whether income under any of those heads is taxable

111 *Non-residents Income arising from business in India* — (i) There is no precise definition in the Act which can be used as a test for determining in every particular instance whether a non-resident is or is not carrying on business in British India and how the amount of taxable profits is to be arrived at Section 42 of the Act contains special provisions regarding non residents, and rules 33 to 35 prescribe the manner in which and the procedure by which the income, profits and gains may be arrived at in the case of non residents Instances are given below of the method to be adopted in dealing with typical cases

(a) *Indian branches of non resident firms* are liable to assessment under the Act In order to secure an accurate assessment in such cases, sections 22 (4) and 37 enable an Income-tax Officer to require the production of the balance sheet and profit and loss account of the firm as a whole in addition to that of the Indian branch and also to require the submission of a detailed statement of all the profits credited to the personal account of the head office on account of transactions carried out on its behalf In some instances, however, the form adopted for the accounts and balance sheets of the head office or the Indian branch does not enable the share of profits properly due to the Indian branch to be accurately gauged, while there are certain firms which keep no accounts at all either at their head office abroad or at their branch offices in India Rule 33 gives Income tax Officers wide powers to determine how the profits of the Indian branch shall in these circumstances be calculated and enables them to fix as the income of the Indian branch for assessment purposes either a percentage of the turn over of the business done by the branch or where this procedure proves unsuitable, an amount which bears the same proportion to the total profits of the business as the Indian receipts bear to the total receipts of the business, or, where neither of the above methods proves suitable, any other

more reliable method of calculation. In the case of shipping companies in particular the most suitable method of assessing the Indian branch is usually to *calculate tax* on *the same proportion* of the total profits of the company as the Indian receipts of the company (*meaning thereby the sums* received either in India or elsewhere on account of goods shipped or passengers carried from India) bear to its total receipts. In the special case of the Indian branches of non-resident insurance companies, (life, marine, fire, accident, burglary, fidelity guarantee, etc.), it will probably be found both feasible and equitable to adopt the provisions of rule 35 and assess these branches on the proportion of the total profits of the companies corresponding to the proportion which their Indian premium income bears to their total premium income.

(*b*) *Indian firms allied to non-resident firms of which they are not technically either branches or agencies* often succeeded in the past in escaping their proper taxation by a manipulation of accounts with the parent non-resident companies. To cite an example, a foreign firm dealing in aniline dyes was registered as a separate limited liability company in India with a capital of Rs. 20,000. The shares were never placed on the market in India, but, with the exception of small holdings by managers in India, were all held abroad. The registered capital was nominal in comparison with the value of the stock-in-trade and the parent company abroad sold to the subsidiary Indian Company at a price leaving a margin, just sufficient to cover the expenses of the subsidiary company, or causing an actual loss to be shown. Section 42 (2) of the Act is designed to prevent a subsidiary Indian firm or company from benefiting by such a manipulation, and enables an Income-tax Officer to assess it on the profits which may reasonably be deemed to have been derived from its Indian business, while, where any difficulty is experienced in arriving at a basis for assessment, assessment on a percentage of turn-over, or other suitable method can be adopted under rule 34. It is to be noted that the provisions of section 42 (2) are not applicable where the parent non-resident firm or company is constituted within the British Empire and that the liability to assessment is placed on the subsidiary Indian firm as a principal and not as an agent.

(*c*) *Indian agents of non-resident firms of which they are not technically either branches or subsidiary firms* are liable for the payment on account of their principals, of the tax on their principals' Indian profits under the provisions of sections 42 (*1*) and 43 of the Act. It will be observed that these provisions permit the levy of the tax on a non-resident's business not only where he has established a regular *agency* in India but also where he conducts his business regularly through a particular *agent* or casually through various *agents*. In this case it is not necessary that anything of the nature of a regular *agency* should exist in order to

make the profits of a non resident chargeable in the name of an agent They are so chargeable even when the only connection between the non resident and the person acting as his agent is that that person is ordinarily and regularly employed as an agent by the non resident The Government of India do not however, desire that in practice the liability to assessment should be enforced except where something definitely of the nature of an agency exists and in particular no attempt should be made to tax the profits of a *consignment business pure and simple* merely because the non resident consignor habitually uses a particular resident as his agent

In all cases it will be a question of fact whether the connection between the non resident and the resident is such that an agency can be held to exist Agency for the purposes of this section should be interpreted to mean a regular not casual agent and one whose relation to the non resident principal is such that the principal may reasonably be held to be trading in the country and not merely with the country If for example there is no *privity of contract between a foreign principal and a resident who* purchases the foreign principal s products through another resident or if the resident vendor has to bear any bad debts arising out of such transactions the resident vendor is not to be treated as the agent of the non resident Even if a non resident does not bear bad debts he will be considered to be trading in the country (*if there is privity of contract*) if the agent receives a *del credere* commission *i e* an additional commission in consideration of guaranteeing the non resident against bad debts or if the rate of commission is so unusually high as evidently to be intended to include a *del credere commission though none is specifically* mentioned It is doubtful whether it is practicable to formulate for the guidance of Income tax Officers any more definite principles than those stated above but the following examples may serve to indicate the lines on which decisions should be reached

(a) B a distiller in Glasgow has agreed to sell to no one in India except A his Agent provided that A gives B all or an agreed proportion of his trade A purchases from B and sells to the trade at his own rates and all bad debts are A s No attempt should be made to tax B on his profits His position in spite of his supplementary agreement with A is merely that of a seller to an Indian consignee who takes the risks or profits of the trade in India

(b) A an Indian resident and a large supplier of mill stores has a monopoly for the sale in India of the belting of a non resident B A is paid commission by B on all order he sends either for his own stock or risk or in execution of orders obtained He does not confine his purchases of belting to B He stands

all loss from bad debts and fixes the prices to be asked for the goods. Here again the position of B is merely that of a seller to an Indian consignee, and no attempt should be made to tax B's profits.

(c) A is the Indian agent for hardware and sundries of B, a British manufacturer. A receives salary and commission from B and bad debts fall on B. Here there is a regular agency and B's Indian profits should be taxed through A.

(d) A is the Indian agent for B, a firm in an Indian State, who consigns goods for sale in Bombay and China through A. The business is purely a consignment business and B's profits on his Indian trade should not be taxed.

In all these cases A's remuneration or profits as agent are liable to the tax.

(d) *Casual agents for non-resident firms to whom goods are from time to time consigned* have been dealt with in (3) above and no attempt should be made to tax the profits of a non-resident through the agent on this class of business.

(e) *As regards taxation of interest on money lent by a non-resident to a resident in British India*, it has been held by the Privy Council in the case of the Bombay Trust Corporation as agent of the Hongkong Trust Corporation that there can be a business connection within the meaning of sections 42 and 43 of the Act between a resident borrowing money from a non-resident and a non-resident lending money to a resident, and that the former can be treated as the statutory agent of the latter, under section 43 of the Act. This decision is to be followed wherever it is applicable. Where, however, a resident takes for a short period, a casual and isolated loan from a non-resident with whom he has no regular or continuous dealings, it need not be held on the strength of that fact alone that there is a business connection within the meaning of the above section and that the resident is liable as agent on the interest paid to the non-resident.

(ii) In the Madras High Court Case No. 4 of 1921, Chief Commissioner of Income-tax, Madras *versus* Bhanjee Ramjee & Co., (I, Srinivasan Tax Cases, page 147), it has been held that a person who is not a resident in British India but to whom income arises or accrues through business connections in British India is assessable to income-tax under sections 4 and 42 (*1*) of the Act whether he is a British subject or a foreigner and that the provision in the latter section that such income shall be taxable in the name of the agent of any such person does not mean that it is not chargeable unless assessed in the name of an agent. It will be clear from section 42 (3) that the entire profits

of a branch or agency of a foreign firm importing goods in British India are liable to tax in British India irrespective of where the profits accrued or arose, and whether received in British India or not. Thus if a *foreign manufacturer* has an agency or branch in British India and sells his products through it in British India, he is liable to tax on his manufacturing profits as well as on the merchanting profits—while a foreign head office is not allowed to charge a notional commission to its branch or agency in British India on goods exported to the branch or agency and sold by it in British India

(*iii*) If it is desired to assess a non-resident who has no resident agent through whom such assessment can be made, and whose entire income also cannot be taxed at source or indirectly, a notice under section 22 (2) should be served upon him as early as possible in the year by registered post (acknowledgment due) allowing plenty of time for the return to be made If he then fails to make a return, or to comply with subsequent notices calling for the production of accounts, etc (in which also ample time should be allowed for compliance), an assessment may be made under section 23 (4) When serving such notices on a non resident, he should be invited in a covering letter to appoint an agent to represent him for income-tax purposes in India

(*iv*) A person whom the Income-tax Officer has decided, after due notice and hearing under section 43, to treat as the agent of a non-resident, is not entitled to appeal to the Assistant Commissioner against the Income-tax Officer's order until an assessment has been made. But it is open to such person to petition to the Commissioner of Income-tax against the Income-tax Officer's order before an assessment is made, and Commissioners of Income-tax are authorised to dispose of such petitions under section 33 of the Act

(*v*) Non-residents whose income arises in more than one province, and who are assessed direct and not through statutory agents under section 43 of the Act, will be assessed by the Income-tax Officer, Non-Residents Refund Circle, Bombay, who will also deal with applications from them for relief, whether under section 48 or under section 49 of the Indian Income-tax Act, 1922, or under any Notification issued by Government under section 60 (*1*) of the Act, providing for relief on account of double payment of income-tax

(*vi*) Non residents whose income arises in a single province, and who are assessed direct and not through statutory agents under section 43 of the Act, will be assessed by one or more special Income-tax Officers appointed by the Commissioner of Income-tax in the province concerned

(*vii*) When a statutory agent has been appointed under section 43 of the Act for the recovery of Income-tax or super-tax

with Income tax Officers and not through an Agent in British India —

1 Where a British Shipping Company which corresponds direct with an Income tax Officer, is unable to furnish its return of income by the prescribed date, it will obtain an extension of time from the Income tax Officer, but every effort should be made to file the return as early as possible

2 The Income tax Officer will make the assessment as soon as possible after receiving the return and in any case within one month

3 The notice of demand will be issued on the shipping company s agent in accordance with the provisions of the Income tax Act and a copy of the assessment order will be sent to the company direct The company will arrange with its agent for the despatch to it of the notice of demand

4 Provided that the notice of demand can be issued on or before January 15th, the period allowed for payment will be sixty days If the demand is made after January 15th the period will be shorter

5 For the purpose of sub section (2) of section 30 of the Indian Income tax Act, 1922, the Assistant Commissioner will regard it as a proper extension of time to allow the shipping company to file an appeal up to the date on which a reply could be received from England if that reply were despatched by the mail in the week following that in which the notice of demand and the copy of the assessment order reached, or could be presumed to have reached the company

6 The demand must be met within due date unless the Income tax Officer agrees to give the agent further time for payment But in any case the demand must be paid before the end of the financial year If a demand has been paid before the decision of an appeal where one has been filed and the appeal results in a reduction of the assessment a refund will promptly be granted in the ordinary course

114. *Occasional shipping* —(*Tramp steamers, etc*) —(*i*) Only one person can be taxed under Chapter V A in respect of a particular ship taking up passengers, live stock or goods at ports in British India, and that person is the principal ' within the meaning of section 44 A Such principal may be either the owner or the charterer of the ship It will be a question of fact in each case in which the ship has been chartered by the owner to another person whether the owner or the charterer is the principal

(*ii*) Chapter V-A *is only* appreciable where the principal (1) carries on business in Britsih India as the owner or charterer of a ship, (2) does not reside in British India, and (3) does not employ an agent from whom the tax would be recoverable under section 42. Where there is no charterer the owner will be the principal. Where there is a charterer it will be a question of fact whether he or the owner is the principal. The business of which the profits are to be calculated and assessed for income-tax under Chapter V-A is the business of carrying passengers, live-stock or goods shipped at ports in British India, and the person to be taxed is the person (referred to in Chapter V-A as the 'principal') who carries on that business, but does not reside in British India, and does not employ any agent from whom the tax would be recoverable under section 42. The criterion to be applied is, "who is the person to whom or on whose behalf money is paid or payable on account of carriage of passengers, live-stock or goods from a port in British India?"

(*iii*) Generally speaking, where there is what is known as a 'Time Charter', under which the owners may be said to let the ship out to the charterer for a fixed sum for a certain period, during which the owners retain no further control over the vessel or her movements, the owners cannot be held to be carrying on business in British India, or even to have a 'business connection' in British India, and are therefore *not liable to Indian income-tax either under Chapter V-A or under section 42.*

(*iv*) Where, however, the ship has been *chartered* under what is known as a 'Voyage' or 'Trip' Charter the position is different. Under this kind of Charter party, the charterers are practically in the position of brokers, who guarantee to secure a certain quantity of cargo for the owners at certain rates of freight. If the full amount of freight cannot be secured, the charterers are liable to make good the deficiency. Any such deficiency is to be paid by the charterers to the Master, on behalf of the owners, in cash, *minus* a certain percentage, at the time and place of loading in India. Similarly, if freight is secured in excess of that stipulated the Master of the ship is to pay such excess to the Charterers, at the time and place of loading, by demand draft on the owners on London. The Bills of Lading are signed by the Master on behalf of the owners; and the cargo as soon as shipped is therefore in the constructive possession of the owners; and at their risk. The ship is usually consigned to the Charterers *or their agents*, who look after its interests when in port, and for doing so are paid a commission by the owners. The owners also pay brokerage. In such a case, the owners are carrying on business in British India through their agent, the Master, who receives cargo on their behalf, and receives and makes payments on their account in British India, and thus the owners having no *regular* or permanent agent in British India are liable to tax under Chapter V-A on the profits of the business conducted by the Master on their behalf.

(v) If a ship has arrived in a British Indian port, either on owner s account or under a charter and the non resident owner, or the non resident charterer, causes the ship to be chartered, or transfers the existing charter, or effects a sub charter of the vessel as the case may be, such a transaction, though it does constitute the carrying on of business in British India by the non resident, does not of itself amount to carrying on business within British India as the owner or charterer of a ship within the meaning of Chapter VA But if the ship is loaded in any British Indian port the question whether the non resident owner or the non resident charterer is assessable to income tax under Chapter VA must be decided on the principles stated above Whoever of these two persons causes the ship to be loaded with cargo, and is paid the freight for carrying such cargo, is the person who carries on business within the meaning of section 44-A ,

115. *Method of the recovery of the tax*—(i) The Income tax Officer is responsible for the recovery of the tax whether the demand represents the tax assessed by himself under section 23 or sub section (4) of section 23 A or whether it represents an enhancement made by the Assistant Commissioner on appeal under section 31 or by the Commissioner in exercise of his powers of review under section 33 Notices of demand under section 29 or under clause (iii) of sub section (4) of section 23 A in the form prescribed in rule 20 should be issued at as early a date as possible after the assessment is made under section 23 or sub section (4) of section 23 A or when intimation is received of orders of enhancement from superior authorities in order that the tax may be promptly collected The fact that an appeal has been lodged against an assessment should not stop the collection although the Income tax Officer is empowered under section 45, in his discretion to treat an assessee as not being in default until an appeal is disposed of When the Income tax Officer considers that an appeal is a *bonâ fide* appeal, he should in exercise of his discretion under section 45 postpone the collection of the disputed portion of the tax requiring the assessee to pay only the portion of the tax that is not in dispute as the collection thereof cannot be delayed Similarly section 66 (7) of the Act provides that a reference to the High Court shall in no way stop the collection of the tax

(ii) When the tax is not paid within the time prescribed in the notice, or, if no such time is prescribed, by the first day of the second month following the date of the *service* of the notice or order, the Income tax Officer should use the powers conferred upon him by sub sections (*1*) and (*1-A*) of section 46 and impose a penalty for the default A penalty can be imposed under section 46 (*1*) on the person who is responsible for deduction of tax under section 18 and who by failing to discharge this responsibility has become liable to be treated as a defaulter under section 18 (7) of the Act

(*iii*) Section 46 (*3*) and (*4*) provide for cases where a special whole-time income-tax staff for the actual collection of the tax is employed in any area. Where such a staff is employed, the Commissioner of Income-tax may confer upon that staff any of the powers for the enforcement of any process for the recovery of a municipal tax or local rate imposed under any enactment which is in force in any part of the province, *e.g.*, the powers of distraint, if the Income-tax Officer is satisfied that the failure to deduct tax was wilful. In other areas and, in the areas in which a special staff is employed where the powers for the recovery of municipal taxes or local rates have proved insufficient, the Income-tax Officer may, under section 46 (*2*), forward under his signature a certificate specifying the amount of arrears due from an assessee to the Collector of the district and the Collector of the district on receipt of such a certificate must proceed to recover the amount specified in the certificate as if it were an arrear of land revenue. The Collector has, without prejudice to any other power he may have, the power to attach and sell a debt due to a defaulter to recover the arrears.

(*iv*) Where the defaulter is a salaried person the Income-tax Officer may, under the provisions of section 46 (*5*), require the person paying "salary" to such assessee to deduct from any subsequent payments of "salary" any arrears of tax due from such assessee whether those arrears are due on account of tax on 'salary' or on income from any other sources or on account of any penalty.

(*v*) The necessity for prompt collection of the tax should be impressed upon Income-tax Officers since not only is delay in the collection of this tax likely to result in loss of revenue for other reasons, but, under the provisions of section 46 (*7*), no proceedings for recovery can be commenced after the expiration of one year from the last day of the year in which the demand is made, with the exception of the special case referred to sub-section (*1*) of section 42. That sub-section refers specially to arrears of tax due from a non-resident. For the collection of such arrears no time-limit is prescribed as such arrears may be recovered from any assets of the non-resident which may *at any time* come within British India.

(*vi*) The phrase "proceedings for the recovery of any sum payable under this Act" should be interpreted as relating to proceedings taken under section 46. The issue of a notice of demand is not a proceeding for the purpose of this section.

(*vii*) The above remarks regarding recovery of tax apply also, under the provisions of section 47 to the recovery of any penalty imposed under section 25 (*2*), section 28 or sub-section (*1*) and (*1-A*) of section 46.

116. *Refunds of Income-tax* (*Section 48*).—(*i*) Refunds are necessitated owing to the system of taxation at the source, which occurs in the case of the tax on companies and on registered firms [sections 48 (1) and (2)], and of deduction at the source, which occurs in the case of "interest on securities" and "salaries" [section 48 (3)]. In both these cases the rate of tax if any appropriate to the "total income" of the recipient (the shareholder, partner, security-holder or salaried person) is *not known at the time* that the tax is assessed or deducted. As stated in paragraph 78, in order to simplify the procedure in connection with refunds section 18 (9) makes it obligatory upon the person deducting income-tax from "interest on securities" to issue to all security-holders a certificate specifying the amount of the tax deducted from the interest and the rate at which it has been deducted, and similarly section 20 (see paragraph 82) requires the principal officer of a company distributing dividends to issue to shareholders a certificate stating that the company has paid or will pay income-tax on the profits that are being distributed. These certificates (or in the case mentioned in paragraph 81, a certificate by a bank) must ordinarily be accepted by Income-tax Officers as conclusive proof that tax has been paid.

(*ii*) Prior to the passing of the Indian Income-tax (Second Amendment) Act, 1933, a refund was permitted only where there was a difference between *the rate at* which an assessee had tax deducted at source from his dividends, salaries, interest on securities or share of the profits of a registered firm and the rate applicable to his total income from all sources. The result was that where an assessee had income from one of these sources only, he could not claim a refund of tax *deducted* at source even if his income was below the minimum taxable limit because there was no rate applicable to his total income. The Act as now amended allows a refund both where there is a difference in rate and when there is no liability at all to tax.

(*iii*) Where interest on securities is paid to estates vested in the Administrator General or the Official Trustee and where the beneficiaries and their shares are known, the beneficiaries are to apply for refund under section 48 (3), but where the beneficiaries and the share of each in the estate are not known, the estate as a whole should be *regarded* as a separate unit and the Administrator General or the Official Trustee, in whom it is vested should be regarded as the "owner of the securities" for the time being for the purposes of section 48 (3) and he may apply for such refunds. Though a minor, who has been admitted to the benefits of a partnership, cannot have the status of a member of a registered firm, section 48 (2) specifically provides for refund due to him under that sub-section in *respect* of his share of the profits of a registered firm.

(iv) The powers of an Income-tax Officer in respect of refunds can be exercised by any other authority appointed by the Central Government in this behalf under section 48.

(v) For the reason given in paragraph 82, the Income-tax Officer, for purposes of refund in the case of dividends, has to assume that the dividends mentioned in the certificate were taxed at the maximum rate current on the date when the dividends were *declared*. In the case both of dividends and of interest on securities, the tax deducted has to be added to the "net" dividend or interest paid for the purpose of calculating both the "total income" of the applicant and the amount of refund due [see paragraph 74 and section 48 *(1)*].

(vi) A company, a substantial portion of whose income is *known* to be derived from tax-free securities, should be required to certify, as the statutory form prescribed in Rule 14 provides, what percentage of its income in a given year has actually paid tax or is liable to pay tax; and if a shareholder receives a dividend from a company that derives a substantial portion of its income from tax-free securities, the shareholder should only be allowed a refund under section 48 in respect of a portion of his dividend corresponding to the proportion of the company's income that is subject to tax.

(vii) When the amount distributed by a Company as dividends exceeds the total income, profits or gains as calculated for income-tax purposes of the Company in the year in question, taxed and untaxed, which includes cases where there is no income, profits or gains, or a loss (for example where net receipts from non-tax free sources are wiped out or exceeded by the depreciation allowance) the refunds to shareholders should be calculated with reference to the proportion borne by the tax-free income to the total amount distributed less the tax-free income.

(viii) Application for refund under the provisions of the rule 39 should in cases where the applicant is resident in British India be made to the Income-tax Officer of the district in which the applicant is chargeable directly to income-tax or, where he is not chargeable directly to income-tax, to the Income-tax Officer of the district in which he ordinarily resides and such Income-tax Officers are required to give the refunds. In cases where the applicant is resident outside British India, the application should be made to the Income-tax Officer, Non-Residents Refund Circle, Bombay. The Income-tax Officer will, however, allow a claimant who resides in an Indian State, the option of receiving payment of the refund through the Political Officer in that State, that is to say, the refund voucher that will be issued by the Income-tax Officer will be made payable, if the person applying for the refund so desires, at the Political Treasury of the Government of

India in the particular Indian State or if there is no treasury under the control of the Political Officer, at the prescribed British Indian Treasury

(ix) The necessity for refunds of tax on Government securities can be avoided by the procedure laid down in paragraph 78, in the case of persons who are either not liable to the tax or who have a taxable income which is sufficiently stable to justify the Income tax Officer in assuming that the rate applicable to the total income is not likely to move from one grade to another Again as has been pointed out in preceding paragraphs the necessity for a refund can also be avoided in the case of persons who have income which has not been taxed or from which income tax has not been deducted at the source since such persons can claim a set off against the tax due on that other income

(x) In cases where a cash refund is necessary the procedure laid down in rules 36 to 39 should facilitate the granting of refunds The application must be made in the form prescribed in rule 36 by persons resident in British India and in that prescribed in rule 36 A by persons not resident in British India and verified in the manner laid down in those rules and must under rule 37 or 37 A be accompanied by a return of the total income in the form prescribed in rule 19 unless such a return has previously been made or that prescribed in rule 37 A as the case may be A false statement in such a return or in such a verification is punishable under the provisions of section 182 of the Indian Penal Code which are set out in paragraph 87 above The application must also where necessary be accompanied by the certificates mentioned in section 18 (9) or section 20 The applications under rule 40 need not be presented in person but may be sent by post or by an authorised agent

(xi) Where the applicants reside in India instead of issuing a refund order payable at a treasury or a branch of the Imperial Bank of India the amount of refund due may be remitted by money order if the Income tax Officer concerned is satisfied that this course is more convenient In that event the cost of the money order will be borne by Government and should not be deducted from the amount to be refunded If the applicants reside out of India the amount of refund under section 48 or 49 or the Act will be remitted to them by bank draft or money order at their cost unless they appoint agents to receive payment in India

(xii) It should be particularly noted that section 48 does not apply to super tax (see section 58) since super tax is not deducted at the source or taxed at the source with the exception of cases referred in section 18 (3A) (3B) (3C) and (3D) in which cases no claim for any refund can arise

(xiii) Under sub sections (4) and (5) of this section refunds to non residents who are neither British subjects nor subjects of Indian States are not admissible Refunds to non residents

who are British subjects or subjects of Indian States, are to be made with reference to their entire income both in and outside British India which would be liable to Indian income-tax if it accrued or arose or was received in British India. The total income thus computed will, of course, include income from agriculture conducted outside British India.

(*xiv*) The onus of proving the claim to refund (and therefore of adducing satisfactory evidence of his total income) of course lies on the claimant, and if he fails to discharge it his claim should be rejected. It is not necessary, however, for the purpose of such claims to do more than ascertain the grade of tax applicable, or to compute the total income exactly. Certificates by Income-tax authorities in the United Kingdom or a Dominion should be accepted as proof of the amount of the total income. Certificates of responsible officials in Indian States should also be accepted in support of claims presented by subjects of Indian States.

(*xv*) The Act and the rules thereunder permit of a refund application and the accompanying return of total income being signed and presented by a duly authorised agent, on behalf of his non-resident principal. In fact such agents may carry out the entire transactions in the matter of refunds for their principals.

(*xvi*) Sub-sections (*4*) and (*5*) of this section should be applied, irrespective of when the income in respect of which a refund is claimed accrued, arose or was received, to all claims under this section presented on or after April 1st, 1928. (They should not be applied to claims presented but not disposed of before 1st April 1928.)

117. *General power to grant refunds.*—(*i*) Cases do arise where tax has been paid by or on behalf of a person with which he was not properly chargeable or which was in excess of the amount with which he was properly chargeable, which nevertheless do not attract the operation of section 48. For instance an assessee deriving his income entirely from interest on securities may have paid insurance premia for which he can claim a rebate if a formal assessment is made on his income from such interest. But if no such assessment is made he cannot under the provisions of section 48 claim it as a refund. Section 48-A is designed to cover such cases. Where an assessee satisfies an Income-tax Officer that he has paid tax with which he was not properly chargeable for any reason, the latter should allow a refund of the amount so paid. Similarly the Assistant Commissioner and the Commissioner in exercise of their appellate powers can grant such refunds.

(*ii*) As regards the procedure for applying for refunds see paragraph 116.

(*iii*) As regards appeal against an order an Income-tax Officer refusing to grant a refund see paragraph 127.

118. *Refund in special cases*.—(i) Prior to the passing of the Indian Income-tax (Second Amendment) Act, 1933, the Act did not provide for a refund where through death, incapacity, bankruptcy, liquidation or other cause a person could not receive it or claim it. It has now been enacted that under such circumstances an executor, administrator or other legal representative, or the trustee as the case may be, is entitled to receive such refund or to make such claim for the benefit of such person or his estate. This applies to all kinds of refunds whether under section 48, 48-A or 49.

(ii) As regards the procedure to be followed in applying for refunds, see paragraphs 116 and 117.

(iii) As regards the right of appeal against an order of an Income-tax Officer refusing to grant the refund, see paragraph 127.

119. *Set off of refunds against tax due*.—Where a refund is due to an assessee, the Income-tax Officer, Assistant Commissioner or Commissioner may set off the refund wholly or in part against any tax payable by the assessee. This is convenient both to the assessee and to the Income-tax department.

120. *Relief from double income-tax of incomes taxed in British India and the United Kingdom* (*Section 49*).—(i) At a conference between the representatives of the Home Government and of the Dominions and of India an agreement was arrived at to the following effect. That in respect of income taxed both in the United Kingdom and in India there should be deducted from the appropriate rate of the United Kingdom income-tax (including super-tax) the whole of the rate of the Indian income-tax (including super-tax) charged in respect of the same income, subject to the limitation that in no case should the maximum rate of relief given by the United Kingdom exceed one-half of the rate of the United Kingdom income-tax (including super-tax) to which the individual tax-payer might be liable, and that any further relief necessary in order to confer on the tax-payer relief amounting to the lower of the two taxes (United Kingdom and Indian) should be given by India. That is to say, the arrangement is that where income is liable to taxation both in the United Kingdom and in India, it should pay only at the highest rate leviable in either country. These proposals have been accepted by the Government of the United Kingdom and are embodied in section 27 of the Finance Act of 1920. A copy of that section is given below:—

*   *   *   *   *

27. (1) If any person who has paid, by deduction or otherwise, or is liable to pay, United Kingdom income-tax for any year of assessment on any part of his income proves to the satisfaction of the Special Commissioners that he has paid Dominion income-tax for that year in respect of the same part of his income, he shall be entitled to relief from United Kingdom income-tax

paid or payable by him on that part of his income at a rate thereon to be determined as follows :—

(a) if the Dominion rate of tax does not exceed one-half of the appropriate rate of United Kingdom tax, the rate at which relief is to be given shall be Dominion rate of tax;

(b) in any other case the rate at which relief is to be given shall be one-half of the appropriate rate of the United Kingdom tax.

For the purpose of this section, the expression "the appropriate rate of United Kingdom tax" means the rate at which the claimant for the year to which the claim relates has borne or is liable to bear United Kingdom income-tax and where the claimant is liable to United Kingdom super-tax the expression "the appropriate rate of United Kingdom tax" means a rate equal to the sum of the rates at which he has borne or is liable to bear United Kingdom income-tax and super-tax, respectively, for that year.

(2) Where a person has not established his claim to relief under this section for any year of assessment before the first day of January in that year, the relief shall be granted by way of repayment of tax.

(3) Where by reason of the allowance of relief under this section the rate of United Kingdom income-tax deducted from or paid in respect of any part of the income of any individual is less than the standard rate, and the rate of the relief so allowed is greater than the rate appropriate to the case of that individual, such an adjustment shall be made in allowing to that individual any relief to which he may be entitled under the provisions of this part of this Act relating to the rate of tax on the first two hundred and twenty-five pounds of taxable income as may be necessary to secure that the amount of United Kingdom income-tax finally paid or borne by him shall be equal to the amount which would have been paid or borne if the relief under this section had in the first instance been given at the rate appropriate to his case.

(4) Notwithstanding anything in the Rules applicable to Case IV or Case V of Schedule D or in any other provision of the Income-tax Acts, no deduction shall be made on account of the payment of Dominion income-tax in estimating income for the purposes of United Kingdom income-tax, and where income-tax has been paid or is payable in any Dominion either on the income out of which income subject to United Kingdom income-tax arises or is received, or as a direct charge in respect of that income, the income so subject to United Kingdom income-tax shall be deemed to be income arising or received after deduction of Dominion income-tax and an addition shall, in estimating income for the purposes of the United Kingdom income-tax, be made to that income of the proportionate part of the income-tax paid or payable in the Dominion in respect of the income out of which that income arises or is received together with the full amount of any Dominion income-tax directly charged or chargeable in the Dominion in respect of that income :

Provided that—

(a) where any income arising or received as aforesaid consists of dividends which are entrusted to any person in the United Kingdom for payment and the Special Commissioners are satisfied that the person so entrusted is not in a position to ascertain the amount, if the addition to be made under this sub-section the assessment and charge may be made on the amount of the dividends as received by the person so entrusted, but in any such case the amount of the addition shall be chargeable on the recipient of the dividends under Case VI of Schedule D; and

(b) where under the laws in force in any Dominion no provision is made for the allowance of relief from Dominion income-tax in respect of the payment of United Kingdom income-tax, then in assessing or charging income-tax in the United Kingdom in respect of income assessed or charged to income-tax in that Dominion deduction shall be allowed in estimating income for the purpose of United Kingdom income-tax of an amount equal to the difference between the amount of the Dominion income-tax paid or payable in respect of the income

and the total amount of the relief granted from the United Kingdom income tax in respect of the Dominion income tax for the period on the income of which the assessment or charge to United Kingdom income tax is computed

In this sub section the expression dividends includes any interest, annuities, vidends, shares of annuities, pensions, or other annual payments or sums in spect of which tax is charged under the Rules applicable to Schedule C or ıder Rule VII of the Miscellaneous Rules applicable to Schedule D

(5) Where under Rule 20 of the General Rules applicable to Schedules A, , C, D, and E, a body of persons is entitled to deduct income tax from any ividends, tax shall not in any case be deducted at a rate exceeding the rate the United Kingdom income tax as reduced by any relief from that tax given nder this section in respect of any payment of Dominion income tax

(6) Where under the law in force in any Dominion provision is made for ıe allowance of relief from Dominion income tax in respect of the payment of nited Kingdom income tax the obligation as to secrecy imposed by the ncome tax Acts upon persons employed in relation to Inland Revenue shall ot prevent the disclosure to the authorised officer of the Government of the ominion of such facts as may be necessary to enable the proper relief to be iven in cases when relief is claimed both from United Kingdom income tax nd from Dominion income tax

(7) The Commissioners of Inland Revenue may from time to time make egulations generally for carrying out the provisions of this section, and may, ı particular by those regulations provide—

(a) for making such arrangements with the Government of any Dominion to which the last preceding sub section applies as may be necessary to enable the appropriate relief to be granted,

(b) for prescribing the year which in relation to any Dominion income tax is, for the purposes of relief under this section, to be taken as corresponding to the year of assessment for the purposes of United Kingdom income tax

(8) In this section—

(a) The expression 'Dominion" means any British possession, or any territory which is under His Majesty's protection or in respect of which a mandate is being exercised by the Government of any part of His Majesty's dominions

(b) The expressions 'United Kingdom income tax" and "United Kingdom super tax' mean respectively income tax and super tax chargeable in accordance with the provisions of the Income tax Acts

(c) The expression 'Dominion income tax" means any income tax or super tax charged under any law in force in any Dominion, if that tax appears to the Special Commissioners to correspond with United Kingdom income tax or super tax

(d) The expression "Dominion rate of tax" means the rate determined by dividing the amount of the Dominion income tax paid for the year by the amount of the Income in respect of which the Dominion income tax is charged for that year, except that where the Dominion income tax is charged on an amount other than the ascertained amount of the actual profits the Dominion rate of tax for the purposes of this section shall be determined by the Special Commissioners

For the purposes of this section, the rate of United Kingdom income-tax hall be ascertained by dividing by the amount of the taxable income of the erson concerned the amount of tax payable by that person on that income efore deduction of any relief granted in respect of life assurance premiums r any relief granted under the provisions of this section, and the rate of United Kingdom super tax shall be ascertained by dividing the amount of the uper tax payable by any person by the amount of that person's total income rom all sources as estimated for super tax purposes

* * * * * * * *

Under that section a person whose income is assessed both in the United Kingdom and in India is entitled to claim from the authorities of the United Kingdom a refund or rebate of the rate levied in India up to one-half of the English rate.

(*ii*) Section 49 of the Indian Income-tax Act, therefore, provides that where any further relief is to be given in order to secure that such a person shall not pay a higher rate than the highest rate in either country, such relief will be given by India, subject to the limitation that the relief given in India shall not exceed half of the rate of income-tax and super-tax combined. Up to the year 1921-22 the Indian rates of income-tax and super-tax combined were less than half the rates in the United Kingdom, and, therefore, no claim can be made under this section in respect of tax levied up to that year. Relief can only be claimed in India, when owing to any alteration in the rates, the Indian rate is more than half the English rate, and the amount of relief would merely be the amount by which the Indian rate exceeds half the English rate. The rates prescribed in India in most cases now amount to more than half the English rates as fixed for the year 1935-36. The table below shows the amount of English income-tax and super-tax and the effective rate per rupee contrasted with similar figures for the Indian rates.

Income.	English.			Indian.		
	Income-tax.	Super-tax.	Effective rate per rupee.	Income-tax.	Super-tax.	Effective rate per rupee.
1	2	3	4	5	6	7
Rs.	Rs.	Rs. A.	Rs. A. P.	Rs. A.	Rs. A.	Rs. A. P.
15,000	3,375	...	0 3 7 1/5	1,458 5	...	0 1 6 2/3
25,000	5,625	...	0 3 7 1/5	2,886 5	...	0 1 10 1/6
30,000	6,750	183 5	0 3 8 9/25	4,192 11	...	0 2 2 4/5
45,000	10,125	1,375 5	0 4 1 1/15	6,835 15	820 5	0 2 8 2/3
60,000	13,500	3,392 0	0 4 6 1/20	9,114 9	2,005 3	0 2 113/5
75,000	16,875	6,096 0	0 4 10 4/5	11,393 4	3,372 6	0 3 1 4/5
90,000	20,250	9,258 11	0 5 2 14/15	13,671 14	4,739 9	0 3 3 7/24
1,05,000	23,625	12,558 11	0 5 6 1/6	16,588 9	6,289 1	0 3 5 5/6
1,20,000	27,000	16,592 0	0 5 9 3/4	18,958 5	8,203 2	0 3 7 9/20
1,35,000	30,375	20,762 11	0 6 5/7	21,327 14	10,117 3	0 3 8 8/11
1,50,000	33,750	25,300 0	0 6 3 3/5	23,697 15	12,031 4	0 3 9 3/4
2,25,000	50,625	48,675 5	0 7 3/4	35,546 15	25,247 5	0 4 3 9/10
3,00,000	67,500	71,342 0	0 7 6 3/4	47,395 14	42,109 6	0 4 9 3/10
4,50,000	1,01,250	1,29,342 0	0 8 2 2/5	71,093 13	88,593 12	0 5 8 4/25
6,00,000	1,35,000	1,87,092 0	0 8 7 1/15	94,791 13	1,51,484 6	0 6 6 4/5
Companies	...	...	0 3 7 1/5	...	...	0 3 10 1/3

NOTE.—The allowances and abatements allowed by the United Kingdom Income-tax have not been taken into account in working out the figures of United Kingdom income-tax in the table. The income-tax and surtax have also been assumed to be charged on the same income. The figures are therefore only useful as generally indicating the relative rates of taxation in the two countries.

It will be observed that the Indian rate for individuals and firms is *less* than half the English rate up to an income of about

Rs 15,000 Persons with such incomes which are wholly taxed both in the United Kingdom and in India can, therefore, claim a refund or rebate of the whole of the Indian rate to be set against the English rate from the authorities in England and there will be no claim to relief in India The Indian rate for an income of Rs 25,000 is *more* than half the English rate and a person who has paid income tax both in the United Kingdom and in India on this income, could claim a refund from the English authorities of a sum equivalent to 1 anna 9 3/5 pies per rupee on his assessed income and thereafter could claim from the Indian Income-tax authorities a refund of 17/30 pies per rupee of his assessed income An assessee must have obtained relief from the authorities in the United Kingdom and must prove that he has done so and at what rate the relief was granted before any relief can be given to him in India For limitation of the claims for refund see paragraph 126

(*iii*) It is necessary to emphasize the fact that the relief under this section proceeds and is based upon a comparison of the *rate* of tax in India with the *rate* of tax in the United Kingdom and not of the comparative *amounts* of tax paid in either country That is to say, what is compared is the rate of the Indian tax paid by the claimant for the Indian year of assessment corresponding to the United Kingdom year of assessment in respect of the part of the claimant's income liable to United Kingdom tax and not the particular amount of such part of his income liable to United Kingdom income tax as is charged to Indian income tax The rate of Indian income-tax paid in respect of the part of the income in question having been ascertained, the relief from United Kingdom income-tax is granted on that part of the income as charged to United Kingdom income-tax for that year of assessment *irrespective of the fact that the* amount of the *United Kingdom* assessment may be greater or less than the amount of the Indian assessment for the corresponding Indian year of assessment or that the amount of relief may fall short of or exceed the amount of Indian tax actually paid In other words, under this system of relief no enquiry is made in the United Kingdom into any differences of basis of computation under the Indian and United Kingdom rules of assessment, provided that it is clear that on whatever part of the income he claims relief, the claimant has paid (for the Indian year of assessment corresponding to the United Kingdom year of assessment for which relief is claimed) Indian tax in respect of his income from that source, however, that income may have been computed for the purposes of assessment to the Indian tax, and the procedure in India in determining the balance of relief to be given in this country proceeds in exactly the same way.

(*iv*) This system of relief is one that was deliberately adopted at the conference, the principle followed being summarised as follows in the report of the United Kingdom Royal Commission, *viz.* :—

"That there will be no interference either by the United Kingdom or by a Dominion with the basis of assessment adopted by any other part of the Empire, and further that the settlement should be independent of increases and decreases in rate of tax and alteration in the basis of assessment whether in the United Kingdom or in the Dominions. This intention is clearly illustrated by the following examples which are given in the report.

Example 1.—A, a British resident, derives a fluctuating unearned income directly from a Dominion whose rate of tax applied to that income is 1s. 6d. in the £. A has no other income, and his rate of tax in the United Kingdom varies according to the amount of his income. The following figures illustrate the position :—

—	United Kingdom.	Dominion.
1st year.		
Tax before relief	£1,000 at 3*s.* 9*d.*	£600 at 1*s.* 6*d.*
Relief	£1,000 at 1*s.* 6*d.*	*Nil.*
Tax after relief	£1,000 at 2*s.* 3*d.*	£600 at 1*s.* 6*d.*
2nd year.		
Tax before relief	£300 at 3*s.* 6*d.*	£900 at 1*s.* 6*d.*
Relief	£300 at 1*s.* 0*d.*	*Nil.*
Tax after relief	£300 at 1*s.* 6*d.*	£900 at 1*s.* 6*d.*

In this example, although it was the same description of income assessed each year, there were wide variations in the amounts assessed in the United Kingdom and in the Dominion. This might happen owing to different methods of computing taxable profit, and the differences are intentionally exaggerated to illustrate the principles to be followed.

Example 2.—B is a British resident receiving as shareholder an income of £900 from a British Company C which derives the whole of its income from a Dominion. In the first place relief will be given to the Company C, and in order to illustrate how this is done, let it be assumed that the Company's profits as calculated for the United Kingdom tax are £60,000, and as calculated for Dominion tax £50,000. Adjustment will be made to the Company as follows :—

—	United Kingdom.	Dominion.
Tax before relief	£60,000 at 6*s.* 0*d.*	£50,000 at 1*s.* 6*d.*
Relief	£60,000 at 1*s.* 6*d.*	*Nil.*
Tax after relief	£60,000 at 4*s.* 6*d.*	£50,000 at 1*s.* 6*d.*

The Company when paying the dividend to B would deduct 4s 6d in the £, United Kingdom tax, and intimate on the dividend warrant that the relief in respect of double income tax was 1s 6d in the £

Let it be assumed that B s dividend of £900 is his total income, so that his proper rate of charge to United Kingdom income tax is 3s 9d He has suffered Dominion tax to the extent of 1s 6d in the £ and his ultimate rate of United Kingdom income tax is 2s 3d in the £ (3s 9d less 1s 6d), but he has suffered by deduction 4s 6d in the £ and he will accordingly be repaid 4s 6d *minus* 2s 3d = 2s 3d in the £ on £900

Example 3 —D is a British resident receiving £900 from Company C, but he has other income arising in the United Kingdom and his combined rate of income tax and super tax is 7s 6d in the £ He is entitled, therefore, to double income tax relief up to a maximum of 3s 9d but the whole of the Dominion tax (1s 6d in the £) has already been allowed to the Company C, who deduct 4s 6d United Kingdom tax on payment of the dividends, and no further relief is due D will, therefore, be assessable in respect of the £900 at 1s 6d in the £, *viz* , 7s 6d less 4s 6d United Kingdom tax deducted, and 1s 6d Dominion tax '

(*v*) It will be noted that in the table at page 273 the amount of relief which a company can get under the English Act is at the rate of 2 annas in the rupee and that the amount which they can claim from the Indian authorities will be at a rate of 1 anna 11½ pies in the rupee The reason for the comparative high rates in India as compared with the United Kingdom of the tax on companies is that the Indian rate includes the super tax on companies while the English rate does not include the United Kingdom Corporation tax At the same time it must be noted that the Indian rate of 3 annas and 11½ pies given in the table for companies is a rate which in actual practice will never be reached It includes the 2 annas and 8½ pies income tax rate including the surcharge of 25 per cent and the flat rate of 1 anna 3 pies for super-tax including the surcharge of 25 per cent , but the flat rate of 1 anna 3 pies is never charged on the whole of the assessable income but only on the portion of the income in excess of Rs 50,000 The rate for the portion of the income below Rs 50,000 is *nil* In order to get at the comparative rate, the tax paid by the company has to be divided by its total income Thus in the case of a company with a profit of 1 lakh the comparative rate (both income-tax and super tax) would merely be 3 annas and 4 pies while the rate in the case of a company with a profit of 2 lakhs, it would merely be 3 annas and 8 pies In both cases a relief of 2 annas in the rupee would be obtained in the United Kingdom and the balance in India

(*vi*) In order to obtain relief in India a claimant is required to supply the official receipt for the United Kingdom income-tax paid, the notice of assessment in particular showing the basis on which the liability has been computed and a certificate of the Income tax authorities showing what relief has actually been granted to him in the United Kingdom

(*vii*) The following are further examples illustrating the method to be adopted in calculating relief due under section 49 of the Act :—

Example 1.—A, a married man with one child, is *resident in the United Kingdom*; he has a *fixed income of* Rs. 10,500 from property in India and has no other income; his liability to tax is :—

In the United Kingdom.	Rs.	Rs. A. P.	*In India.*
Assessable income		10,500 0 0	Income-tax on Rs. 10,500 at 1 anna 3 pies in the rupee, Rs. 820-5-0
Less Personal allowance . . .	2,000		
Deduction for child . . .	667		
		2,667 0 0	
Taxable income		7,833 0 0	
Tax on the 1st Rs. 2,333 at as. 2 in the rupee.		291 10 0	
Tax on balance Rs. 5,500 at as. 4 in the rupee.		1,375 0 0	
*Total tax (before relief in respect of Indian income-tax)		1,666 10 0	

*For the purposes of calculating "the appropriate rate of United Kingdom tax" this amount is not to be reduced by any relief granted in respect of any life assurance premium.

The United Kingdom tax (Rs. 1,666-10-0), divided by the taxable income (Rs. 7,833) gives an "appropriate rate of United Kingdom tax" of approximately 3 *annas 5 pies. A has paid Indian income-tax* in respect of the same income at a rate of 1 anna 3 pies in the rupee, that is, a rate which is less than half the United Kingdom rate and the relief from United Kingdom tax will, therefore, be a sum equal to the Indian rate on Rs. 7,833.

Example 2.—B is a bachelor resident in the United Kingdom with no dependents and has an earned income of £1,000 assessable to United Kingdom income-tax. He has *no other income and pays income-tax in India* in respect of the income in question. His liability to tax is as follows :—

	United Kingdom. £ s. d.
Total income	1,000 0 0
Less earned income allowance one-sixth of £1,000 . .	166 13 4
Assessable income	833 6 8
Less Personal allowance	100 0 0
Taxable income	733 6 8
Tax on 1st £175 at 2*s*. 6*d*.	21 17 6
Tax on balance £421 at 4*s*. 6*d*.	139 10 0
*Total tax (before relief in respect of Indian income-tax) .	161 7 6

The tax (161-7-6) divided by the taxable income (£733) gives an "*appropriate rate of the United Kingdom tax*" of 4*s*. 5*d*. or 3 :5 *annas in the rupee;* Indian income-tax is payable on this income at a rate of 1 anna 3 pies in the

*For the purposes of calculating "the appropriate rate of United Kingdom tax" this amount is not to be reduced by any relief granted *in respect of life* assurance premium.

rupee, so that B is entitled to get relief from the United Kingdom at the rate of 1 anna 3 pies in the rupee (that is, 1s 7d in the pound) on £733 and there is no balance of relief to be given in India

Example 3—C is a company the whole profits of which are taxed both in the United Kingdom and in India The Indian rate of tax paid by the company is 3 annas and 11½ pies in the rupee while the appropriate rate of United Kingdom tax for the company is 5s in the pound The company can get relief at the rate of 2/6 in the pound (or 2 annas in the rupee) in the United Kingdom and on proof of payment of United Kingdom tax and of the grant of United Kingdom relief can claim from the income tax authorities in India the balance of relief, namely, 1 anna 11½ pies in the rupee

(*viii*) Corporation profits tax paid in the United Kingdom should not be deducted from the income taxed in India for the purpose of calculating the relief claimed under section 49

(*ix*) In considering claims for relief under this section in the case of companies which are assessed separately in India but jointly in the United Kingdom, and one of which makes a loss and the other a profit, it is necessary to scrutinise the United Kingdom assessment to see how much of the income from each source has been taxed Since one company has made a loss which has been allowed in the United Kingdom assessment it is clear that only part of the Indian profits of the other company which has made profit has paid tax in the United Kingdom It is only on this part that relief is allowable since that part only has suffered double taxation.

(*x*) This section merely provides for relief from double tax where the same income is assessed to tax both in the United Kingdom and in India It does not provide for relief in other cases.

121 *Relief from double tax of Incomes taxed in British India and in the United Kingdom—Method of calculating relief in India*—(*i*) The following method should be followed in calculating the "Indian rate of tax", as defined in section 49 (2) [illegible] Indian Income tax Act —

(*ii*) Indian super tax is charged on the whole of the income [illegible] cluding the Rs 50,000 that are free of super-tax [illegible] section 55 of the Indian Income-tax Act, it is said to be [illegible] in respect of the "total income" The result is that [illegible] of income is to be regarded as a single slab [illegible] tax at the effective rate of 6 pies in the rupee

(*iii*) Thus, for the purpose of double [illegible] charged" income of any amount exceeding [illegible] consist of either—

(1) income liable to super tax [illegible]

(2) income liable to both [illegible]

(3) (*a*) income liable to [illegible]

(*b*) income liable to [illegible]

i e, there can at most be only [illegible] part liable to income tax [illegible]

super-tax alone. The whole or a part of the income will, of course, be liable to super-tax alone if the whole or any part of the income is exempt from income-tax but not from super-tax. The relief should be calculated separately on each of the two slabs just mentioned.

This method is that followed by Somerset House.

122. *Relief from double tax of incomes taxed in British India and the United Kingdom—Method of calculating relief in India where there are differences in computing taxable income in the two countries.*—In practically all cases the United Kingdom gives relief in respect of the income charged in the United Kingdom whether that be higher or lower than the income charged in the Dominion. The corollary of this is that Dominions should follow the same principle. The following method should therefore be followed in computing relief in British India :—

(*a*) If the income as computed in British India is higher or lower than that computed in the United Kingdom because either (1) particular allowances and deductions such as wear and tear differ in the two countries or (2) the periods of income on which the tax is charged are not identical, relief in British India should be calculated on the income computed in British India.

(*b*) If the difference between the incomes charged in the two countries is due to a loss being carried forward in the United Kingdom and not in British India, and if there is no other cause of variation, the income will always be lower in the United Kingdom since the carry forward of losses is not allowed in British India. In such cases relief should not be given in India on the losses carried forward in the United Kingdom.

(*c*) If the difference between the incomes charged in the two countries is due to the fact that remittances only are taxed in British India and the whole income in the United Kingdom the remittances alone should be regarded as having suffered double taxation.

(*d*) Where a defined part of the income is exempted from tax or falls altogether outside the scope of the tax in either country, for example, interest on tax-free securities in either country, or agricultural income in British India, relief will not be allowed in respect of the tax on such part of the income. It may be

(however) that the exempted or untaxed part of the income is not defined or separable, but forms an element in the income doubly taxed For example, remittances may be made to the United Kingdom from British Indian income derived from both taxed and tax-free sources in British India, and it may not be possible to say how much is derived from each In such circumstances relief will be allowed on a part of the remittances proportionate to the part of income in British India that is derived from sources, subject to tax The deduction from taxable income allowed in super tax assessments in British India is not to be treated as exempt from super-tax

(e) In the case of tea-gardens, relief will be allowed on the 40 per cent of the combined agricultural and non-agricultural profits liable to tax in British India

123 *Relief from double tax of incomes taxed in British India and in the United Kingdom—Procedure.*—(i) The following procedure should be followed for the grant of relief in respect of double taxation in India and in the United Kingdom —

(ii) When during an assessment it is known that an assessee will be entitled to relief on account of double taxation on any part of his income, the amount of the relief may be calculated by the Income tax Officer so far as is possible and the assessee may be allowed to pay the demand in two instalments, the second of which will represent the amount of relief calculated to be due The date of the first instalment will be that ordinarily fixed for the payment of a demand of income-tax, while the second will be payable two or, if possible, three or four months from the date of the notice of demand If the assessee produces the necessary British certificates and establishes his claim to relief under section 49 of the Indian Income-tax Act, 1922, the demand for the second instalment should be modified by cancellation or reduction or, if the relief is greater than the second instalment and the first instalment has been paid, a refund should be granted

(iii) The above procedure should also be followed in granting relief from double taxation to incomes taxed —

(a) In British India and Burma;

(b) In British India and Ceylon;

(c) In British India and any Indian State mentioned in the Schedule to the Finance Department (Central Revenues) Notification No 25, dated the 1st July 1926 (as subsequently amended)—Paragraph 124 below

124. *Relief from double tax of incomes taxed in British India and in Indian States.*—Arrangements have also been made with several Indian States, which levy income-tax, for the grant of relief from the payment of double income-tax of incomes which are taxed both in any of these Indian States and in British India. Relief is granted in British India at a rate equal to half the Indian State rate subject to a maximum of half the British Indian rate. The State will grant relief at a rate equal to half its rate of tax. The following is a copy of the Notification prescribing the procedure to be followed by persons claiming relief from the payment of double income-tax :—

FINANCE DEPARTMENT (CENTRAL REVENUES).

Notification No. 25, dated the 1st July 1926 (as subsequently amended).

In exercise of the powers conferred by section 60 of the Indian Income-tax Act, 1922 (XI of 1922), the Central Government is pleased to make the following modifications in respect of income-tax, in favour of income on which income-tax has been charged both in British India and in one of the Indian States referred to in the schedule to this notification (hereinafter called the said schedule), namely :—

1. In this notification—

(*a*) the expression "State income-tax" means income-tax and super-tax charged in accordance with the provisions of the law relating to income-tax for the time being in force in the State concerned;

(*b*) the expression "State rate of tax" means the amount of State income-tax divided by the amount of the larger of the two incomes on which income-tax and super-tax respectively have been charged by the State; and

(*c*) the expressions "Indian income-tax" and "Indian rate of tax" have the same meanings as in clauses (*a*) and (*b*), respectively, of section 49 (*2*) of the Act.

2. If any person who has paid Indian income-tax for any year on any part of his income proves to the satisfaction of the Income-tax Officer that he has at any time paid State income-tax in respect of the same part of his income, he shall be entitled to the refund of a sum calculated on that part of his income at a rate equal to half the State rate of tax; provided that the rate at which the refund shall be given shall not exceed one-half of the Indian rate of tax.

3 Every application for refund of income tax under this notification shall be made to the Income tax Officer of the district in which the applicant is chargeable directly to income tax or if he is not chargeable directly to income tax to the Income tax Officer for the district in which the applicant ordinarily resides or if he is not resident in British India—

(i) to the Income tax Officer of the district or area in which he was last charged directly to income tax when so resident or

(ii) if he has never been so resident to the Income tax Officer of the district or area where the income tax for the refund of which application is made was deducted

Such application may be presented by the applicant in person or by a duly authorised agent or may be sent by post and shall be in the following form —

Applications for relief from double income tax under Notification No 25 dated the 1st July 1926

I of do hereby state that I have paid (name of State) State income tax/income tax and super tax amounting to Rs for the year ending 19 on an *income of Rs and that Indian income tax/income tax and super tax of Rs has also been paid on the same income /part of the same income amounting to Rs I now pray for relief at the rate of amounting to Rs under Notification No 25 dated the 1st July 1926 to which I am entitled My income from all sources to which this Notification applies during the previous year ending on the 19 amounted to Rs only—see Return of income attached/already submitted

Signature

I hereby declare that what is stated herein is correct

Dated 19

Signature

* Where the income on which income tax has been charged differs from that on which super tax has been charged both amounts must be specified

4. No claim to any refund of Indian income-tax under this Notification shall be allowed unless it is made within one year from the last day of the year in which such tax or the State income-tax was recovered, whichever is later.

5. Any person objecting to a refusal of an Income-tax Officer to allow a claim to a refund under this Notification or to the amount of refund allowed, may appeal to the Assistant Commissioner.

6. The appeal shall be presented within thirty days of receipt of the intimation of the refusal to grant a refund or of the amount of refund allowed.

7. The appeal shall be in the following form :—

Form of appeal against an order refusing to grant a refund under the Notification of the Government of India in the Finance Department (Central Revenues) No. 25-Income-tax, dated the 1st July 1926.

To

The Assistant Commissioner of

The day of 19

The petition of of post-office district sheweth as follows :—

Your petitioner applied to the Income-tax Officer for a refund under the Notification of the Government of India in the Finance Department (Central Revenues), No. 25-Income-tax, dated the 1st July 1926 of Rs. . The Income-tax Officer has by his order, dated the of which a copy is attached $\frac{\text{refused to grant a refund}}{\text{granted a refund of only Rs.}}$

Your petitioner therefore requests that the order of the Income-tax Officer may be set aside and the refund applied for may be granted.

Signed.

Grounds of Appeal.

Form of Verification.

I, the petitioner named above in the above petition do declare that what is stated therein is true to the best of my information and belief.

Signed.

SCHEDULE

1 Baroda

1 A Jammu and Kashmir

Madras States Agency

2 Travancore

2 A Cochin

Central India Agency

3 Dhar

3 A Makrai

Punjab States Agency

4 Patiala

5 Bahawalpur

6 Jind

7 Kapurthala

8 Loharu

8 A Maler Kotla

8 B Mandi

8 C Faridkot

Bombay

9 Sachin

10 Akalkot

11 Phaltan

11 A Chhota Udepur

11 B Ramdurg

11 C Kolhapur

11-D Sangli

11-E Jam Khandi

United Provinces

12 Benares

Eastern States Agency

13 Baster

14 Kanker

15 Raigarh

16 Jashpur

17 Sarangarh

18 (Omitted)

19 Kawardha

20 Khairagarh

21 Korea

22 Nandgon

23 Chhuikhadan

24 Mayurbhanj

24 A Patna

24 B Sonpur

24 C Kalahandi

24 D Rairakhol

24 E Baudh

24 F Seraikela

Punjab

25 Baghat

125 *Relief from double tax of incomes taxed in British India and Ceylon*—As a result of the introduction of income tax in Ceylon with effect from 1st April 1932, arrangements have been made with the Ceylon Government for the grant of relief in cases where the same income has been subjected to Ceylon tax as well as Indian income tax Relief is granted in India to the extent of half the Ceylon tax calculated on that part of the income on which relief is admissible under the Ceylon Income tax Law or half the Indian income tax on the same part of the income, whichever is less It will be observed that relief is based on *amounts* of tax not on *rates* of tax The notification prescribing the procedure

to be followed by persons claiming relief from double income-tax is reproduced below :—

FINANCE DEPARTMENT (CENTRAL REVENUES).

Notification No. 14, dated the 2nd April 1932.

In exercise of the powers conferred by section 60 of the Indian Income-tax Act, 1922 (XI of 1922) the Governor General in Council is pleased to make the following modifications in respect of income-tax in favour of income on which income-tax has been charged both in British India and in Ceylon, namely :—

(1) In this notification—

(*a*) the expression "Ceylon tax" has the meaning assigned to it in section 45 (*4*) (*b*) of the Ceylon Income-tax Ordinance, 1932 (2 of 1932),

(*b*) the expression "Indian income-tax" has the meaning assigned to it in clause (*a*) of section 49 (*2*) of the Indian Income-tax Act, 1922 (XI of 1922).

(2) If any person, who has paid Indian income-tax for any year on any part of his income, proves to the satisfaction of the Income-tax Officer that he has paid Ceylon tax for the corresponding year in Ceylon, he shall be entitled to the refund of a sum equal to half the Ceylon tax calculated on that part of his income on which relief is admissible under the Ceylon Income-tax Law, or to half the Indian income-tax on the same part of his income, whichever is less : Provided that where any person is entitled to a further relief in British India on that part of his income on which relief is admissible under the Ceylon Income-tax Law on account of its having been also taxed in some other country besides Ceylon, the relief in respect of the Ceylon tax shall not exceed the difference between half the Indian income-tax and such further relief as may have been granted in British India owing to that part of his income having been taxed in some other country besides Ceylon.

(3) Every application for refund of income-tax under this notification shall be made to the Income-tax Officer of the district in which the applicant is chargeable directly to income-tax or if he is not chargeable directly to income-tax to the Income-tax Officer of the district in which the applicant ordinarily resides or if he is not resident in British India—

(*i*) to the Income-tax Officer of the district or area in which he was last charged directly to income-tax when so resident, or

(*ii*) if he has never been so resident, to the Income-tax Officer of the district or area where the income-tax for the refund of which application is made was deducted.

Such application may be presented by the applicant in person or by a duly authorized agent or may be sent by post, and shall be in the following form —

Application for relief from double income-tax under Notification No 14, dated 2nd April 1932

I, of do hereby state that I have paid Ceylon tax amounting to Rs for the year ending 19 , on an income of Rs and that Indian income-tax/income tax and super tax of Rs has also been paid on the same income*/part of the same income amounting to Rs I now pray for relief of a sum of Rs under Notification No 14, dated 2nd April 1932 to which I am entitled My income from all sources to which this Notification applies during the "previous year" ending on the 19 , amounted to Rs only—see Return of income attached/already submitted

Signature

I hereby declare that what is stated herein is correct

Signature

Dated 19

(4) No claim to any refund of income tax under this notification shall be allowed unless it is made within one year from the last day of the year in which such tax or the Ceylon tax was recovered whichever is later

The following points should be borne in mind in regard to the grant of relief in British India in respect of income taxed in British India and in Ceylon

A —TAX

It should be remembered that —

(1) Under section 45 (4) (b) (1) of the Ordinance, "Ceylon Tax" does not include, for purposes of relief either in India or Ceylon, the additional 2 per cent charged on non-resident companies under section 20 (6) of the Ordinance

(2) "Ceylon Tax" does not include, for purposes of relief either in British India or Ceylon, tax on interest or other charges on income included in the Ceylon assessment [Ordinance section 45 (4) (b) (ii)]

*When the income on which income tax has been charged differs from that on which super tax has been charged both amounts must be specified.

(3) "Indian Tax" includes personal Super-Tax, both in India and Ceylon.

(4) "Indian Tax" in India includes Company Super-Tax as regards companies themselves, but not as regards shareholders. Ceylon will adopt the same basis.

(5) Any person objecting to a refusal of an Income-tax Officer to allow a claim to a refund under this Notification or to the amount of refund allowed, may appeal to the Assistant Commissioner.

(6) The appeal shall be presented within thirty days of receipt of the intimation of the refusal to grant a refund or of the amount of refund allowed.

(7) The appeal shall be in the following form :—

Form of appeal against an order refusing to grant a refund under the Notification of the Government of India in the Finance Department (Central Revenues) No. 14-Income-tax, dated the 2nd April 1932.

To

The Assistant Commissioner of
The day of 19 .

The petition of of post-office district sheweth as follows :—

Your petitioner applied to the Income-tax Officer for a refund under the Notification of the Government of India in the Finance Department (Central Revenues), No. 14-Income-tax, dated the 2nd April 1932 of Rs. . The Income-tax Officer has by his order, dated the of which a copy is attached

refused to grant a refund
granted a refund of only Rs.

Your petitioner therefore requests that the order of the Income-tax Officer may be set aside and the refund applied for may be granted.

Signed.

Grounds of Appeal.

Form of Verification.

I, the petitioner named above in the above petition do declare that what is stated therein is true to the best of my information and belief.

Signed.

B — PART OF HIS INCOME ' (INDIA)
"HIS INCOME FROM ANY SOURCE ' (CEYLON)

Relief of half the smaller tax (both countries)

(1) As the British Indian Notification No 14 (Finance Department—Central Revenues), dated the 2nd April 1932, is drafted, relief is to be allowed in British India 'on that part of the income on which relief is admissible under the Ceylon Income tax law The practical result of this is that the expressions part of his income ' in the Indian notification, and his income from any source' in the Ceylon Ordinance, refer to the same thing, and the British Indian relief is automatically regulated by the Ceylon relief

The British Indian and Ceylon authorities alike will ignore in granting relief all differences between the computation of the income in the two countries due to—

(a) Certain expenses being allowed in one country and not in the other

(b) The allowances for depreciation being higher in one country than in the other

(c) Depreciation being carried forward in one country and not in the other

(d) Losses being carried forward in one country and not in the other

(e) The fact that assessment is made on the income arising" in one country and on remittances in the other

(f) The fact that the assessments are based on different accounting periods in the two countries

(g) Where a Tea Estate is taxed on 40 per cent of its profits in British India and on the whole profits in Ceylon, there will be only one source of income from the Ceylon point of view and the relief allowed in each country will be half the lower amount of tax ignoring this difference in the basis of assessment

(2) No relief can be given unless tax is paid for the same year in each country on the source in question, *e g* , in the first year of a business, tax will be levied on its profits in Ceylon but not in British India in the year after a business ceases, its profits will be liable to tax in British India but not in Ceylon No relief can be given in these cases

C —"ANY PERSON"

(1) In Ceylon, the income of married women is treated as that of their husbands If the wife is separately assessed in British India, on the same income she will be entitled to relief in British India

(2) *Partnership.*—Ceylon charges tax on individual partners and not on partnerships at all. No difficulty will arise in British India in regard to registered Firms. If partners of an unregistered firm are assessed in Ceylon and the firm is assessed in India, the partners will be entitled to relief in British India and direct assessments should be made on them for the purpose.

SHAREHOLDERS.

(1) A resident in India has dividends from a Company in Ceylon from which Ceylon tax is deducted at source. He is assessed in India on those dividends, as may in certain circumstances happen.

He will be entitled to relief in India.

(2) A resident in Ceylon is a shareholder in an Indian Company and is taxed on its dividends in Ceylon. The Company is taxed only in India. Ceylon will regard him as having suffered Indian tax indirectly. He will be entitled to relief in India.

125-A. *Relief from double tax of incomes taxed in British India and in Aden.*

FINANCE DEPARTMENT (CENTRAL REVENUES).

Notification No. 21-Income-tax, dated the 15th June 1937.

In exercise of the powers conferred by section 60 of the Indian Income-tax Act, 1922 (XI of 1922) the Central Government is pleased to make the following modifications in respect of income-tax in favour of income on which tax has been charged both in British India and Aden, namely :—

(1) In this Notification :—

(*a*) The expression "Aden Income-tax" means income-tax and super-tax charged for any year in accordance with the provisions of the Aden Income-tax Ordinance, 1937.

(*b*) The expression "Aden rate of tax" means the amount of Aden income-tax divided by the amount of the income on which it was charged.

(*c*) The expression "Indian income-tax" means income-tax and super-tax chargeable in accordance with provisions of any law in force in British India.

(*d*) The expression "Indian rate of tax" means the rate determined by dividing the amount of income-tax paid in British India for the year in question by the amount of income on which tax was charged.

(*e*) The reference to the lower of the two rates shall, where the rates are equal, be construed as a reference to either of those two rates.

(2) If any person who has paid Indian Income-tax for any year on any part of his income proves to the satisfaction of the Income-tax Officer that he has paid for that year Aden Income-tax in respect of that part of his income he shall be entitled to the refund of Indian Income-tax calculated on that part of his income at a rate bearing to the Indian rate of tax or the Aden rate of tax whichever is the lower the same proportion as the Indian rate of tax bears to the sum of the Indian rate of tax and the Aden rate of tax

(3) Every application for refund of income-tax under this notification shall be made to the Income-tax Officer of the district in which the applicant is chargeable directly to income-tax or if he is not chargeable directly to income-tax, to the Income-tax Officer of the district in which the applicant ordinarily resides, or if he is not resident in British India—

(i) to the Income-tax Officer of the district or area in which he was last charged directly to income-tax when so resident, or

(ii) if he has never been so resident, to the Income-tax Officer of the district or area where the income-tax for the refund of which application is made was paid

Such application may be presented by the applicant in person or by a duly authorised agent or may be sent by post, and shall be in the following form :—

Applications for relief from double income-tax under Notification No 21-Income-tax, dated the 5th June 1937

I, of do hereby state that I have paid Aden income-tax/income-tax and super-tax amounting to Rs for the year ending 19 on an income* of Rs and that Indian income tax/income-tax and super-tax of Rs has also been paid on the same income*/part of the same income amounting to Rs. I now pray for relief at the rate of amounting to Rs. under Notification No 21-Income-tax, dated the 5th June 1937 to which I am entitled My income from all sources to which this Notification applies during the "previous year" ending on the 19 , amounted to Rs only—see return of income attached/already submitted.

Signature

I hereby declare that what is stated herein is correct.

Dated 19 .

Signature

* Where the income on which income tax has been charged differs from that on which super tax has been charged both amounts must be specified

(4) No claim to any refund of Indian income-tax under this Notification shall be allowed unless it is made within one year from the last day of the year in which such tax or the Aden income-tax was recovered, whichever is later.

(5) Any person objecting to a refusal of an Income-tax Officer to allow a claim to a refund under this Notification or to the amount of refund allowed, may appeal to the Assistant Commissioner.

(6) The appeal shall be presented within thirty days of receipt of the intimation of the refusal to grant a refund or of the amount of refund allowed.

The appeal shall be in the following form :—

Form of appeal against an order refusing to grant a refund under the Notification of the Government of India in the Finance Department (Central Revenues). No. 21-Income-tax, dated the 5th June 1937.

To

The Assistant Commissioner of

The day of 19 .

The petition of of post-office district sheweth as follows :—

Your petitioner applied to the Income-tax Officer for a refund under the Notification of the Government of India in the Finance Department (Central Revenues), No. 21-Income-tax, dated the 5th June 1937 of Rs. . The Income-tax Officer has by his order dated the of which a copy is attached

refused to grant a refund
granted a refund of only Rs.

Your petitioner therefore requests that the order of the Income-tax Officer may be set aside and the refund applied for may be granted.

Signed.

Grounds of Appeal.

Form of Verification.

I, the petitioner named above in the above petition do declare that what is stated therein is true to the best of my information and belief.

Signed.

125-B. *Double income-tax relief—British India and Aden—Arrangements regarding—*

The following procedure has been agreed upon between the Government of India and the Government of Aden and should be

followed for the grant of relief in respect of double taxation in India and in Aden —

(i) Any assessee who is liable to tax in both countries and *whose head office is in British India* may submit in British India with his British Indian return of income a copy of his Aden return of income subject to his clearly distinguishing in the former any income which he claims to be taxable in British India only and in the latter any which he claims to be taxable in Aden only The Income tax Authorities in Aden will then be informed that this has been done and will ordinarily postpone further assessment enquiry until a further reference is made by the Income tax authorities in British India The British Indian Income tax Officer will examine the accounts relating to all the income and in his assessment order will distinguish between (i) what he holds to be purely British Indian income (*e g* investment of reserves) and (*ii*) income taxable in both countries (*e g* trading profits on sales in British India of Aden Salt) He will then issue his British Indian demand and forward to the Government of Aden a copy of his assessment order accompanied by a note regarding his examination of the accounts relating to (*iii*) income taxable in Aden only if any The Aden Income tax Officer then will if satisfied issue his assessment order and demand on the basis of (*ii*) and (*iii*) as reported if not satisfied he will make further enquiries In each country the original demand will for form s sake be for the total tax payable in that country but with a note to the effect that the amount in excess of being the sum of the estimated share of that country in the tax at the higher rate on (*ii*) and of the tax on (*i*) or (*iii*) as the case may be need not be paid pending the completion of discussions between the Income tax departments of the two countries as to the final amount each is to receive after setting off double income tax relief

(*ii*) The above procedure will it is understood be adopted *mutatis mutandis* by the Aden Income tax authorities in respect of assessees who are liable to tax in both countries and *whose head office is in Aden*

126 *Limitation of claims for refund* (*Section 50*) —(*i*) Claim for refund are admissible if made within 12 months from the last day of the calendar year in which the tax was recovered or before the last day of the financial year commencing after the expiry of the previous year as defined in section 2 (11) of the Act in which the income arose on which the tax was recovered whichever period may expire later This limitation applies also to refunds of double income tax (section 49) The date of recovery in this case is of course the date of recovery of the tax in India Since however there is often very great delay in settling assessments and claims to relief in the United Kingdom provisional claims for

double income-tax relief unsupported by proof that relief has actually been obtained in the United Kingdom may be accepted if presented within the limitation period if the assessee definitely undertakes to produce such proof *as soon as* relief in the United Kingdom has actually been obtained. When this undertaking is punctually fulfilled the claim may be treated as one presented in due time. Claims to refund under section 49 may also be admitted after the expiry of the prescribed period, if the applicant satisfies the Commissioner, or an Assistant Commissioner specially empowered in this behalf, that he had sufficient cause for not making the claim within the period.

(*ii*) This section should be interpreted as illustrated below in dealing with claim for refund of tax on dividends. Taking the case of a shareholder in a company which declares a dividend in January 1929, if he is directly assessed and is a person who does not keep accounts, or whose "previous year" is the income-tax year, an adjustment can be made whenever he is assessed in the income-tax year April 1929 to March 1930, while an application for a refund can also be entertained at any time up to 31st December 1930. If he keeps accounts and his "previous year" runs, say, from October to September, an adjustment can be made in the course of assessment during the financial year 1930-31. An application for refund can also be entertained up to 31st March 1931. Where the shareholder keeps accounts on the cash basis, the relevant date is the date of receipt and not the date of declaration, and the foregoing instructions have to be read subject to this modification.

127. *Appeals against refusal to grant refunds.*—Section 50-A gives a person aggrieved by an order of an Income-tax Officer refusing to allow a refund or granting a refund of an amount less than what he has claimed under section 48, 48-A or 49, the right to appeal to the Assistant Commissioner against such order. The appeal should be presented within 30 days of the date on which the order was communicated to him. The appeal should be in the form prescribed for the purpose and verified in the prescribed manner. Before passing any order on such appeal the Assistant Commissioner should give the assessee an opportunity of being heard.

128. *Prosecution for offences. (See also paragraph 87).*—Prosecution of assessees for offences under sections 51 and 52 cannot be commenced except at the instance of an Assistant Commissioner and the Assistant Commissioner, is under section 53, empowered to stay any such proceedings or compound any such offence. The power of compounding an offence is one that can be exercised not only after proceedings have been commenced, but before proceedings are instituted at all.

129 *Income-tax records to be kept confidential* (*Section 54*) —(*i*) While the Act of 1918 merely penalised the disclosure by a public servant of the particulars contained in any statement or return furnished under the Act, section 54 further penalises the disclosure of any particulars contained in any accounts or documents produced under the Act or in any evidence given or deposition made in the course of proceedings under the Act or in any record of an assessment proceeding or proceedings for recovery of a demand, and debars the Courts from requiring public servants to produce income tax records or to give evidence respecting the same

(*ii*) The provisos to sub section (2) contain provisions stating in what particular cases information may be disclosed The effect of the provisions is that information obtained in connection with the assessment of incomes and recovery of the tax may be disclosed by public servants to such persons only as act in the execution of the Act and where it may be necessary to disclose the same to them for the purposes of the Act, or in order to, in the course of, a prosecution for perjury committed in connection with proceedings under the Act The production before a Court of any document, declaration or affidavit filed, or the record of any statement or deposition made in a proceeding under section 26 A, or the giving of evidence by a public servant in respect thereof is also not prohibited Proviso (*c*) was inserted mainly for the purpose of extending the protection to every action of a public servant in pursuance of the provisions of the Act or the rules such as the service of a notice by affixture Proviso (*cc*) authorises the disclosure of any particulars contained in an Income tax record which is occasioned by the lawful exercise by a public servant of his powers under the Indian Stamp Act, to impound an insufficiently stamped document Apart from these particular cases it is essential that all records should be kept strictly confidential and, in particular the practice in certain provinces of furnishing information to local authorities, who impose a tax on 'circumstances and property' or a local income tax, of the details of assessment made by the income tax authorities must cease This prohibition applies equally to furnishing such information to other Government departments

(*iii*) For the meaning of the phrase "public servant' see paragraph 9

130. *Super-tax* —(*i*) The provisions of the Act regarding income tax other than those specially excepted in section 58 apply also to super-tax which is merely, as stated in section 55, "an additional duty of income-tax" Super-tax is levied at the rates specified in the Finance Act (at the end of Part I of this Manual)

(*ii*) The super-tax on companies is levied at a flat rate on the whole of the profits of a company This tax on companies, which takes the place of the tax formerly levied at a graded scale of rates

on the "undistributed profits" of a company, is levied on the company as such on account of the special privileges which companies enjoy by statute in the shape of corporate finance and limited liability. No refund on account of super-tax on companies is, therefore, allowed to shareholders.

(iii) Apart from the tax on companies which stands in a class by itself, super-tax is levied on a scale of graduated rates. While in the case of income-tax the different rates are applied to the *whole* of an assessee's income, the different rates of super-tax are levied on successive "slices" of income, *i.e.*, on the portions of an assessee's income in excess of certain limits or the portions lying between certain limits.

(iv) Hindu undivided families are treated for purposes of super-tax, as for income-tax purposes, as separate assessees.

(v) Unregistered firms are also treated as separate assessees. Where, however, an unregistered firm itself is not assessed to super-tax (*e.g.*, if its assessable profits are less than Rs. 30,000), in that case only is the income which any individual member of an unregistered firm receives from the firm included in his total income for super-tax.

(vi) Registered firms are not assessed to super-tax, but the shares of partners in registered firms are included in the total income of the individual partners on which super-tax is levied and similarly *the dividends of shareholders received from companies* are included in the individual income of those shareholders.

(vii) The tax is levied on "total income" and "total income" in all cases means exactly the same thing as total income calculated for income-tax purposes with the solitary exception that where an unregistered firm is itself assessed to super-tax, the share of the profits of a member of the unregistered firm is excluded from his total income for super-tax purposes.

131. *Deduction of super-tax at the source.*—(i) One of the exceptions to the general rule that super-tax is recovered by assessment of the person liable is that provided in sections 18 (3A) to (3D) and 57. That provision is rendered necessary owing to the difficulty of obtaining income-tax and super-tax from non-residents. Section 57 (1) provides that in order to recover super-tax from the share of the profits of a partner in a registered firm, who is not resident in British India, the resident partners are themselves jointly and severally liable to pay the super-tax due from the non-resident in respect of his share. Section 18 (3A) authorises an Income-tax Officer to require the person responsible for paying 'interest not being interest on securities' to deduct income-tax and super-tax at the time of payment of such interest to a non-resident, if the amount in any year exceeds the maximum amount which is not chargeable with super-tax, at the rates determined by him to be applicable to the total income of such person in that year. Under

section 18 (3B) where the person responsible for paying any interest *not being interest on securities* to any person pays to that person in any year an amount of such interest exceeding in the aggregate the maximum amount which is not chargeable with super tax, the person responsible for paying such interest shall, if the recipient is not known to be a resident and no order under section 18 (3A) has been received from the Income tax Officer in respect of such recipient, deduct at the time of payment income tax on the total amount of such interest at the rate appropriate to such total and super tax on the amount by which such total exceeds the maximum amount not chargeable with super tax at the rate applicable to such excess

(ii) Section 18 (3C) authorises an Income tax Officer to require the principal officer of a company to deduct super tax at the rate determined by him from the dividends payable to a non resident shareholder whose total income is expected to exceed the maximum amount which is not chargeable to super tax This rate must be the effective or average rate of super tax, that is to say, first the total amount of super tax due on the total income must be calculated Then the rate is to be arrived at by dividing this total super tax by the total income That rate is to be notified to all persons paying dividends and they should be required to deduct super tax at that rate from whatever dividends they pay. These sections should not ordinarily be resorted to where the non-resident has an authorised agent in India to whom these interest payments or dividends are paid and through whom he can be assessed to income tax and super tax in the ordinary way under section 43 of the Act, but this section should be employed where special circumstances render it necessary, *e g*, where a non-resident has resorted to some device by which such proceedings under section 43 have been rendered infructuous Any such case should be reported by the Income tax Officer concerned to the Assistant Commissioner of Income tax whose orders should be taken before proceeding under this section

(iii) Section 18 (3D) makes a principal officer of a company liable to deduct any super tax due on dividends payable to a shareholder whom he has no reason to believe to be resident in British India The liability under this section and section 57 (1) merely attaches where the amount of the profits or dividends payable to the non resident partner or shareholder together with the amount of any income tax payable by the company or firm in respect thereof is taken by itself liable to super tax on the assumption that it represents the whole income of the non resident partner or shareholder It should be observed that if for example dividends are paid half yearly and the combined amount of the two payments in any year and the income tax thereon exceeds the minimum liable to super tax though the first payment including the income tax on it taken by itself does not exceed it the principal officer is

bound to deduct the super-tax on such excess from the second payment. The Act does not require the resident partner or the principal officer to obtain from the non-resident partner or shareholder a statement of any other income that may accrue to him in British India. Where there is reason to believe that there is such other income it will be necessary to rely on the provisions of sections 42 and 43 of the Act or Section 18 (3C). In the case of companies the obligation to deduct applies only to dividends and does not apply to other sums which a non-resident may receive from the Company by way of interest on debentures or remuneration such as Director's fees. If the non-resident is himself assessed through an agent, sub-section (2) of section 57 provides that amount deducted at the source in this manner shall be taken into account in determining the amount payable by him in respect of any other income.

132. *Super-tax. Deduction at source from dividends of non-resident shareholders.*—Section 18 (3D). Sometimes large blocks of shares are registered in the names of banks, and held by them on behalf of the real owners for various reasons, though the banks have no proprietary or beneficial interest therein. The aggregate dividends on a block of shares in a single company thus held by a bank may exceed the maximum amount exempt from super-tax, though the dividends payable to some or all of the real owners individually may not exceed that amount. In such circumstances super-tax should not be deducted at source from the dividends payable to the bank irrespective of the liability of the several real owners of the shares. If, therefore, a bank in such circumstances furnishes the Income-tax Officer assessing the company from time to time with a list giving the names and addresses of the real owners of the shares and the number of shares held by each, the Income-tax Officer will inform the principal officer of the company, under section 18 (3C), of the rate of super-tax to be deducted in respect of the dividends payable to the bank, or that no super-tax is to be deducted therefrom, as the case may be, having regard to the liability of the individual shareholders.

133. *Rules.*—Rules made under section 59 of the Act by the Central Board of Revenue are contained in Part II of this Volume. With the exception of the rules first made under the Act, the power to make rules is, under section 59 (3), subject to the condition of "previous publication". The meaning of the phrase "subject to the condition of previous publication" is given in section 23 of the General Clauses Act, 1897 (X of 1897), *viz.*:—

"Where, by any Act of the Governor-General in Council or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply namely :—

(1) the authority having power to make the rules or bye-laws shall before making them publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;

(2) the publication shall be made in such manner as that authority deems to be sufficient

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration

(4) the authority having power to make the rules or bye laws shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye laws from any person with respect to the draft before the date so specified

(5) the publication in the Gazette of a rule or bye law purporting to have been made in exercise of a power to make rules or bye laws after previous publications shall be conclusive proof that the rule or bye law has been duly made

134 *Relief under section 60 (2)* —In calculating relief to be granted to an assessee in respect of any year under section 60 (2) any advantage gained by him in a previous year in which part of his salary was short paid will be taken into account This sub section applies to all cases irrespective of the consideration that the payment of salary in advance or in arrears was in accordance with the rules governing the payment Salary in this sub section has the same meaning as salary in section 7

135 *Composition not permissible* —The provision in previous Acts that allowed a system of composition of assessment and enabled the Income tax Officer under specified conditions to enter into compositions with assessees has been omitted from the present Act No composition of assessment can therefore now be made although any composition entered into before the present Act came into force must be given effect to for the period for which the agreement was made

136 *Assessment of income tax on married women* —(i) Although there is no specific provision to this effect in the Act a married woman is chargeable as if unmarried and has to be separately assessed in respect of her separate income

(ii) Pension received from funds such as the Indian Military Service Family Pension Fund by a widow on account of her children and on account of herself are distinct and separate from one another The pension of a minor orphan paid to his or her mother or a duly appointed or recognised guardian should not be included in the taxable income of the mother or guardian for the purposes of income tax assessment

137 *Method of serving notices or requisitions* —(i) Under section 63 of the Act a notice or requisition may be served either by post or in any manner provided for the service of summons under the Code of Civil Procedure The words by post under section 27 of the General Clauses Act, 1897 (X of 1897) mean by registered post

(*ii*) Section 63 (*2*) specially provides that in the case of firms or Hindu undivided families a notice or requisition may be addressed to any member of the firm or to the manager or any other male member of the family.

138. *The determination of the Income-tax Officer by whom an assessment is to be made.*—(*i*) While for the reasons given in paragraph 35 every Income-tax Officer is, under section 64 (*4*), vested with all the powers conferred by or under the Act on an Income-tax Officer in respect of any income, profits or gains accruing or arising or received within the area for which he is appointed, the question of the Income-tax Officer by whom a particular assessee is to be assessed has to be determined in accordance with the provisions of sub-sections (*1*) to (*2*) of section 64. Under those provisions, if an assessee carries on business, he has to be assessed by the Income-tax Officer of the area in which his principal place of business is situate; in all other cases an assessee has to be assessed by the Income-tax Officer of the area in which he resides. Where there is any doubt or dispute on any such question, the question is to be finally determined by the Commissioner of the province in which the areas are situate. Where the areas are situate in more than one province, the question is to be determined by the Commissioners of the provinces concerned in consultation, and, where two Commissioners are not in agreement, the question will be determined by the Central Board of Revenue. In all cases of dispute, however, before any such question is determined, the assessee must be given an opportunity of representing his views.

(*ii*) If an assessee whom an Income-tax Officer is seeking to assess challenges his jurisdiction on the ground that the assessee's principal place of business or residence is in a different income-tax circle, the Income-tax Officer should at once report the case to the Commissioner for orders. Even if the Income-tax Officers of the various circles concerned are in agreement as to the proper place of assessment, they are not competent to decide finally where the assessment should be made unless the assessee acquiesces in their decision. If he disputes it and the alternative places of assessment are all in the same Province, the Commissioner of Income-tax of that Province can finally determine the place of assessment. If alternative places of assessment are not situated in the same Province, it is not necessary for the Commissioners to refer the case to the Central Board of Revenue, unless they hold different views.

(*iii*) It is not necessary for an assessee who disputes the jurisdiction of the Income-tax Officer either to move the Commissioner himself or to ask the Income-tax Officer to do so. Whatever the assessee does or proposes to do, therefore, the Income-tax Officer should take the Commissioner's orders at once whenever his jurisdiction is challenged.

(*iv*) As the question of jurisdiction must be decided before any assessment can be made, the Income-tax Officers and Commissioners should deal with all questions arising under section 64 as expeditiously as possible.

139. *Reference to High Court.* (*Section 66*).—(i) Under the Act of 1918 a reference to the High Court on a question of law might be made only if the head of the income-tax department in a province saw fit. He was not required to make any such reference on the application of an assessee if satisfied that the application was frivolous or that a reference was unnecessary. Under section 66 of the Act, the Commissioner of Income-tax has no longer power to withhold a reference on these grounds but is required to state a case to the High Court on the application of an assessee. In order to provide against frivolous or unnecessary applications, sub-section (2) requires that every such application shall be accompanied by a fee of Rs. 100 or such lesser sum as may be prescribed by rule made by the Central Board of Revenue (no lesser sum has yet been prescribed). In order to safeguard the revenue, sub-section (7) provides that the fact that a case has been stated to the High Court shall in no way stop the collection of the tax from the assessee.

(ii) An application for a reference to the High Court can only be made after an appeal to the Assistant Commissioner under section 31 or an appeal under section 32 to the Commissioner or a reference to a Board of Referees under section 33-A has been disposed of. An assessee must therefore exhaust his remedies of appeal to the income-tax authorities before requiring a reference to the High Court. As it is desirable that questions of principle should so far as possible, be settled by the revenue authorities, the proviso to sub-section (2) provides that if on receipt of such an application the Commissioner is himself prepared to give a ruling in favour of the assessee on the point of law raised, the applicant may withdraw his application for a reference to the High Court in which event the fee paid shall be refunded.

(*iii*) An assessee may also ask for a reference to the High Court on a question of law arising out of an order of the Commissioner of Income-tax under section 33 of the Act. This right has been newly conferred on the assessee by the Indian Income-tax (Second Amendment) Act, 1933. A reference in respect of such an order can be asked for only where the order enhances an assessment or otherwise prejudices the assessee and in no other case. Further a reference can be made *only on a point of law arising out of the order under section 33 itself* and not on a question of law arising out of a previous order under section 31 or section 32 revised by the order under section 33.

during a particular year of assessment. The reason for this is obvious. The method of assessment based on the previous valuation is itself a concession which, if the companies wish to enjoy, they must take as a whole. If there were to be a subsequent re-adjustment with reference to any of the transactions in the current actuarial period, this would have to be made after the period was closed with reference to the transactions of the company as a whole during that period, but this course would obviously not be suitable as it would mean very long deferred adjustments.

(iv) In *other classes* of insurance business (fire, marine, motor car, burglary, etc.), an annual calculation of profits is practicable, and rule 29 provides in the case of those particular businesses for the method of treating sums placed by companies carrying on some or all of these branches of insurance business to reserves for unexpired risks. The reasons underlying the concession granted in this rule should be carefully noted. The profits derived, for instance, by a Fire Insurance Company from the premia which it receives cannot be finally determined until the policies issued in return for the premia have expired and the risks to the company thereunder have terminated and, as the periods during which the risks endure will not ordinarily coincide with the period on which the assessment to income-tax is based it is necessary to frame some estimate of the expenditure which the company will be called upon to incur owing to the fact that the risks covered by its premium income in the years of assessment have not entirely ceased. With proper safeguards to prevent manipulation of the accounts, this estimate can equitably be made by treating sums placed by insurance companies carrying on these classes of business to their reserved for unexpired risks as expenditure incurred solely for the purpose of earning the profits of the business. And where, as not infrequently occurs, the reserve is divided into two parts of which the first is intended to cover normal unexpired risks and is generally reckoned at a fixed percentage of the premiums, and the second is intended to cover exceptional losses from widespread calamities, the rule allows this treatment to additions to both parts of the reserve. The safeguards against abuse which the rule imposes are as follows :—

(1) All sums on account of unexpired risks, which a company wishes to have treated as expenditure for income-tax or super-tax purposes, must actually be credited to a Fund in the accounts of the company;

(2) They must also be specifically appropriated to meet liabilities under existing contracts; and

(3) The contracts must be with policy-holders.

(v) The only other fund established by insurance companies for which special provision is made in the rules (Rule 30) is the Investment Reserve Fund Amounts actually credited by an insurance company of any kind in the ordinary accounts of its business for the accounting period to its Investment Reserve Fund for the purpose of meeting depreciation in the value of its securities can be treated as expenditure incurred for the purpose of earning the profits of the business in determining the taxable income of the insurance company in that year The reasons for this departure from the general rule that reserves are not allowed as a business expense are as follows —In the first place it may be noted that these adjustments are not optional, the company is required to make them in order to ensure that its assets are not overstated in the valuation The transfer of sums by a Life Assurance Company to Investment Reserve Fund differs moreover, essentially from the placing of amounts to reserve by a bank or ordinary commercial company, either for the purpose of extending its business or for the provision of additional working capital the sums thus placed to reserve are practically speaking composed of undistributed profits There is also a substantial difference between this transaction on the part of an insurance company, and that by which a bank writes off the depreciation of the securities which it holds A bank meets depreciation by reducing its Reserve Fund a Life Insurance Company meets it by reducing its Life Assurance Funds, and this reduction may be made either by writing down its assets or by leaving the assets unaltered and setting up as a liability an Investment Reserve Fund equal to the depreciation The latter course is usually adopted but in both cases the depreciation is a loss, and to tax the amount of depreciation would lead to the anomalous result that the greater the loss to the company the greater would be the amount which it is required to place to its Investment Reserve Fund and consequently the greater the tax it would have to pay

(vi) On the other hand should the accounts show a credit for "appreciation' of assets rule 30 provides for such appreciation being taxed The words "as has been otherwise taken into account in the latter portion of rule 30 mean having been carried to the Life Assurance Fund or otherwise taken into account"

(vii) The reason for the use of the word may instead of "shall ' in rules 27 29, and 30 is that while the concessions conferred by these rules should be granted as a general practice the income tax authorities retain a discretion to refuse them where the concessions have been abused

(viii) Companies carrying on *Dividing Society or Assessment* business are in a different position to the insurance companies proper in that they have not to build up funds similar to the Life

Assurance Fund of ordinary Life Assurance business, and their profits are not ordinarily ascertainable by actuarial valuation. It is necessary, therefore, to fix some arbitrary method of determining the taxable income of companies transacting these kinds of business and under rule 31 this is done by taking 15 per cent. of the premium income in the "previous year".

142. *Liability of instruments presented to or issued by Income-tax authorities to Stamp duty and Court-fees.*

Affidavits.—(*i*) Exemption (*b*) to Article 4, Schedule I, Indian Stamp Act, 1899, does not apply to an affidavit required for the immediate purpose of being filed or used in any Income-tax proceedings or before the Income-tax Officer or the Assistant Commissioner or the Commissioner, because none of these officers is a 'Court'.

Copies or Extracts.—(*ii*) Under Article 24, Schedule I, *ibid*, all copies or extracts certified to be true copies or extracts by officers in the Income-tax Department are liable to stamp duty if under the law they are not chargeable with Court-fees.

Powers of Attorney (Authorisation Letters).—(*iii*) A bare letter of authorisation, *i.e.*, written statement by an assessee that a certain person appears on his behalf, does not require to be stamped as a "power of attorney". A "power of attorney" is a document which renders it safe for a third person to treat the agent as though he were the principal. Whether a document that is more than a bare letter of authorisation, does, in fact, entitle the agent to bind the principal is a matter of fact that can only be decided with reference to the facts of each case. If it is a "power of attorney" it is liable to stamp duty. The power of attorney should be stamped as an authority to act in a single transaction [Article 48 (*c*) of Schedule I]. There is, however, nothing to prevent an Income-tax Officer granting permission to a representative to appear without acting on behalf of an assessee, *i.e.*, merely to produce or explain accounts, etc.

Orders—Copies of.—(*iv*) Under Schedule I, Article 6, of the Court-fees Act, 1870, every copy of an order passed by an officer in the Income-tax Department in respect of any proceedings under the Act is chargeable with Court-fees.

(*v*) Under Article 9 of the same schedule, every copy of an Income-tax proceeding or order (not otherwise provided for by the Court-fees Act) or copy of any account, statement, report or the like taken out of an office in the Income-tax Department is liable to Court-fees.

(vi) Article 6 of Schedule I of the Court fees Act applies to quasi judicial orders e g assessment orders including orders en hancing assessments orders under section 27, orders imposing penalties under section 25 (2) and section 28 (1) and all appellate and revisional orders generally, and Article 9 to other orders

(vii) Under paragraph 99, a copy of the assessment order passed under section 23 is supplied free of copying charges by the Income tax Officer on an application by an assessee subject to certain condi tions Such a copy is also free of court fee under item 9 of Gov ernment of India Notification No 4650 dated 10th September 1899 if for the assessee s private use But if a copy of the assess ment order is filed as an exhibit in support of an appeal etc it must be stamped with the proper court fee stamp The position is the same in respect of copies of appellate orders under section 31

Petitions—Applications —(viii) Under Article 1 of Schedule II of the Court fees Act, 1870 every application or petition present ed to any executive officer (which includes any officer in the Income tax Department) for the purpose of obtaining a copy or translation of any order passed by such officer or any other docu ment on record in such office is chargeable with Court fees

(ix) Under Article 1 (c) of the same Schedule an application or petition presented to the Central Board of Revenue is chargeable with Court fee

Wakalatnama —(x) Under Article 10 (a) and (c) of the same Schedule a Mukhtarnama or Wakalatnama presented for the conduct of any one case to an officer in the Income tax Depart ment or the Central Board of Revenue is chargeable with Court fee

[illegible] (xi) An appeal preferred under [illegible] liable to Court fee [illegible] fees Act (*N B* —No Court fee is chargeable on petitions presented under section 33)

Refunds —(xii) Applications for refunds under section 48 of the Indian Income tax Act are exempt from payment of Court fees under clause (xx) of section 19 of the Court fees Act

Court fees—Computation of —(xiii) In all those cases where the Court fee is *advalorem* the monetary value for the purpose of determining the Court fee is the amount of tax or penalty levied by the Income tax Officer

Rates of duties —(xiv) Stamp duties and Court fees vary from Province to Province As regards the details of the rates refer ence should be made to the various Stamps and Court fees Amend ment Acts in the different Provinces which have been passed in recent years

INDEX

INDEX TO INCOME-TAX MANUAL.

Commissioner of Income-tax—*contd.*

* Note exempt from super tax

* *Note exempt from super-tax.*

mptions from income and super-tax—*contd.*

Income tax Officer—*contd*

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